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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 446.

CORWIN D. BACHTEL, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 9, 1906.

(20,411.)

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INDEX.

	Original.	Print.
Certificate of clerk of supreme court of Ohio as to entry of final judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error, &c.	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order suspending execution of judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Certificate of clerk of supreme court of Ohio to record	*x*	10
Transcript from circuit court of Stark county	1	11
Caption	1	11
Petition for writ of *habeas corpus*	1	12
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Indictment for making false entry in report..	4	14
Indictment for making false entry in report..	6	16
Indictment for making false entry in report..	8	18
Indictment for making false entry in report..	10	20
Indictment for making false entry in report..	12	22
Indictment for misapplication and embezzlement	14	24
Indictment for making false entries in books..	18	27
Indictment for making false entries in books..	21	29
Indictment for making false entries in books..	23	30
Indictment for making false entries in books..	26	32
Indictment for making false entries in books..	28	34
Indictment for making false entries in books..	31	35
Indictment for making false entries in books..	33	37
Indictment for abstraction, misapplication, and embezzlement	35	39
Indictment for abstraction, misapplication, and embezzlement	39	42
Indictment for misapplication and embezzlement	44	45
Indictment for misapplication and embezzlement	47	47
Indictment for misapplication and embezzlement	50	49
Indictment for misapplication and embezzlement	53	51
Indictment for misapplication and embezzlement	56	53
Indictment for misapplication and embezzlement	59	55
Order postponing hearing and fixing bond, &c	65	59
Recognizance	65	59
Order of continuance	66	60
Order remanding petitioner, &c	66	60
Order of supreme court of Ohio suspending judgment, &c	67	61
Recognizance to suspend judgment	68	62
Mandate from supreme court of Ohio	69	63
Clerk's certificate	72	65
Certified statement of the secretary of state of the State of Ohio showing the names and years of incorporation of banking institutions under the various banking acts of the State	73	65

a Supreme Court of Ohio.

10166.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, *Emerson* E. *Lawson*, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10,166, wherein Corwin D. Bachtel was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D., 1906.

Witness my hand and Seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D., 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b Supreme Court of Ohio.

No. 10166.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Assignment of Errors.

Now comes Corwin D. Bachtel, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the

United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United c States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited acts.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel, Plaintiff in Error.

d [Endorsed:] No. 10166. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of errors. Filed Sep. 14 1906 Supreme Court of Ohio, L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10166.

CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Corwin D. Bachtel assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn

in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906 be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel,
Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of eror allowed; and the said Corwin D. Bachtel having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictment until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st 1906.

g [Endorsed:] No. 10166. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

h CORWIN D. BACHTEL, Plaintiff in Error,

v.

R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Corwin D. Bachtel as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

CORWIN D. BACHTEL.
THE BANKERS' SURETY COMPANY.
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authority of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven thousand Dollars over and above its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me September 17, 1906.
[SEAL.]
E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10166. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Corwin D. Bachtel and R. Frank Wilson, sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Corwin D. Bachtel, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of September, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10166. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Corwin D. Bachtel is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio.

o [Endorsed:] No. 10166. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10166.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Petition in Error.

Plaintiff in error Corwin D. Bachtel states that in the vacation after the February term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to wit: on May 24th, 1906, the Plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a writ of *habeas corpus* and on that day applied to the Hon. Thomas T.

McCarty, one of the judges of said Circuit for a writ of *habeas corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said writ; that in the vacation after said February term, 1906, to wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application writ and return, that said plaintiff in error the petitioner therein should be remanded to the custody of the defendant in error, Sheriff of Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the
q plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to wit:

First. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

Second. That said Judges erred in holding that Section # 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of article 1, Sections 1 and 2 of the Constitution of Ohio.

Third. That said Judges erred in holding that Section # 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2 Section # 26 of the Constitution of Ohio.

Fourth. That said Judges erred in holding that Section # 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of section 1 of the 14th amendment to the Constitution of the United States.

Fifth. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

Sixth. And for other errors apparent on the face of the record.

r Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

CORWIN D. BACHTEL,
By ALBAUGH & WELTY,
VIRGIL P. KLINE,
JOSEPH M. BLAKE,
WM. A. LYNCH,
His Attorneys.

Issue and service of summons in error upon this petition in error are hereby waived and appearance entered.
June 9th, 1906.

FRANK WILSON,
By JOHN W. VRAINE &
CHARLES C. UPHAM,
His Attorneys.

s In the Supreme Court of the State of Ohio.

SATURDAY, *June* 9, 1906.

10166.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Entry.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark County, Ohio, until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10166.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879

(3821-85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the state of Ohio under which said indictment was or could be found returned or prosecuted; that upon the return of said indictment to said court of Common Pleas the plaintiff in error demurred to said indictment upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictment were void for the reason among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictment, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the
u judges of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictment, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictment were void because they were repugnant to section one article one, section two article one, and section 26 article two of the constitution of the State of Ohio, also section one of the fourteenth amendment of the constitution of the United States; that the judge of said Circuit Court petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictment were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictment were not repugnant to said section one article one, section two, article one, section 26 article two of the constitution of the State of Ohio, or section one of the fourteenth amendment to the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section (3821-85) of the Annotated
v Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one and section 26 article two of the constitution of the state of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictment are not void nor invalid nor repugnant to the said section one, section two article one and section 26 article two of the constitution of the State of Ohio or sec-

tion one of the fourteenth amendment to the constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—.

Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10166.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County Defendant in Error.

Error to Circuit Court of Stark County.

June 9. Petition in error, waiver, Circuit Court Transcript and original papers filed.
9. Entry suspending judgment. Bond $7000.00. J. 21,119.
9. Copy of entry suspending judgment sent Clerk.
12. Motion by defendant to advance and notice filed.
19. " to advance allowed. J. 21, 130.
22. Certificate of Sec'y of State filed.
29. Judgment affirmed.
July 24. Mandate issued.
9. Original papers sent Clerk.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
Bond in duplicate filed.
Writ of Error filed.
Citation on Writ and entry of appearance filed.

x Supreme Court of Ohio.

10166.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the

record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case and upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio this fourth day of October, A. D. 1906.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.*

1 At a term of the Circuit Court begun and held at the Court House in the City of Canton within and for the County of Stark, in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 18th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said court then and there held among other things appears the following, to-wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 718.

In the Matter of the Application of CORWIN D. BACHTEL for Writ of *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 11th day of June in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's office of said Circuit Court a certain petition in this cause, which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of CORWIN D. BACHTEL for a Writ of *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by R. Frank Wilson, sheriff of said county, at the county jail of said county. The pretended cause of said imprisonment is an order made by the Court of Common Pleas of said County, committing the petitioner to detention in the county jail of said county to await his trial in said court upon certain pretended indictments, numbered 2491, 2492, 2493, 2494, 2495, 2497, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2508, 2509, 2511, 2512, 2513, 2514, 2519 and 2520 which said pretended indictments were pre-
2 sented under and solely by virtue of a certain statute to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879, (3821-85) of the Annotated Statutes of Ohio; that said statute is in contravention of the 14th amendment of the constitution of the United States and of aricle 1, sections 1 and 2 and article 11, section 26 of the constitution of Ohio, is unconstitutional and void, and that said court was without jurisdiction, power or authority to issue said order and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

WM. A. LYNCH AND
WELTY AND ALBAUGH,
Attorneys for Corwin D. Bachtel.

STATE OF OHIO, *Stark County, ss:*

Corwin D. Bachtel being duly sworn says that he is the petitioner in this proceeding; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

CORWIN D. BACHTEL.

Sworn to by said Corwin D. Bachtel before me and by him signed in my presence this 11th day of June, 1906.

JACOB J. WISE, *Clerk,*
By A. W. AGLER, *Deputy.*

And afterwards on the 11th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 460.

Be it remembered that on this day, at the Court House at the City of Canton, in said County, came Corwin D. Bachtel and his Attorneys

William A. Lynch and Welty & Albaugh, and submitted to the undersigned, one of the Judges of said Court his petition for a Writ of *Habeas Corpus*, which has been filed in the office of the Clerk of said Court, and said petition being heard it is now here ordered that the prayer of the petitioner for the issuance of said Writ be granted and that the Clerk of the Court shall issue the same to the sheriff of said County commanding him to have the body of said Corwin
3 D. Bachtel before the undersigned at the Court-house Court room number two, at one o'clock P. M. this day.

Done at Canton, June 11, 1906.

T. T. McCARTY,
Judge of the Circuit Court of Stark County, Ohio.

And thereupon on this same day there was duly issued from the Clerk's office of said court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to-wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Corwin D. Bachtel by you imprisoned and restrained of his liberty, as it is said you take and have before Thos. T. McCarty, a Judge of our Circuit Court, or in case of his absence or disability, before some other Judge of the same Court, at the Court House *House* in said County, forthwith, to do and receive what said Judge shall then and there consider concerning him in his behalf; and summon the said sheriff then and there to appear before said Judge to show the cause of the taking and detention of the said Corwin D. Bachtel. Witness my signature and the seal of said Court, at Canton, this 11th day of June, A. D. 1906.

JACOB J. WISE,
[SEAL.] *Clerk of said Circuit Court.*

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's office of said Court the foregoing writ of *habeas corpus* issued to said sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

Received this writ on the 11th day of June, 1906, and in pursuance of the command thereof, I hereby certify that the within named Corwin D. Bachtel was taken into my custody on the 11th day of June, 1906, and is now detained by me, by virtue of an order of Hon. W. W. Hole, one of the Judges of the Court of Common Pleas

of the First Subdivision of the 9th Judicial District of the State of Ohio and in Stark County, and by reason of this surrender of the said Corwin D. Bachtel, by his sureties in open court on an indictment as hereinafter described of the said Court of Common Pleas in Stark County, Ohio, on June 11, 1906. The said Corwin
4 D. Bachtel having been heretofore indicted by the Grand Jury of Stark County, Ohio, for an offense under section 3821-85 of the Revised Statutes of the State of Ohio, and known as the free banking act, a copy of said indictments are hereto attached marked "Exhibit A," and made a part of this return, and I now have the body of the said Corwin D. Bachtel before this Court as within commanded.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

EXHIBIT "A."

Indictment for Making False Entry in Report.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County on or about the 15th day of October, in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier of The Canton State Bank, a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking Company was located and engaged in the business of banking in the City of Canton, in said County of Stark and State of Ohio, unlawfully and knowingly did make a false entry in a report of the said banking Company showing its condition at the close of business on October 12, 1904, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with the requisition made October 12, 1904, by the said W. D. Guilbert, Auditor of the State of Ohio, to the cashier of The Canton State Bank, Canton, Ohio, in ac-
5 cordance with the law of the State of Ohio, with intent then and there to injure and defraud the said, The Canton State

Bank, its directors and depositors and to deceive W. D. Guilbert, the Auditor of the State of Ohio, and to deceive Austin C. Brant, the President of said banking Company and to deceive Silliam Wagner and William R. Zollinger part of the directors of the said banking company, which said report is in the words and figures following, to-wit:—

Dr. Resources.	Dollars. Cts.	Cr. Liabilities.	Dollars. Cts.
1. Loans on real estate....	660618.84	1. Capital stock paid in.....	180000.00
3. Overdrafts	1921.32	2. Surplus fund.....	19000.00
7. Due from other banks and bankers..... ...	53318.29	3. Undivided profits.	7999.27
9. Furniture and fixtures..	2000.00	6. Individual deposits.....	525051.02
10. Current expenses.	122.62	8. Notes and bills rediscounted	15000.00
12. Cash items.....	11955.87		
13. Gold coin ..... $4750 Silver coin..... 981.35	5731.35		
14. National bank notes & 15. United States notes.....	11382.00		
Total	747050.29	Total....	747050.29

STATE OF OHIO,
County of Stark:

Sworn to and subscribed before me, this 15th day of October, 1904, at 9 o'clock.

JOHN T. BLAKE,
Notary Public. [SEAL.]

I, Corwin D. Bachtel, Cashier of "The Canton State Bank," do solemnly swear that the above statement is true, to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This Bank was incorporated May, 1900, under act of 1851, and commenced business May 21", 1900.

CORWIN D. BACHTEL, *Cashier.*

which said false entry so made as aforesaid, by the said Corwin D. Bachtel, cashier as aforesaid, of the said The Canton State Bank, was as follows: "due from other banks and bankers 53318.29" thereby making said report to show that at the close of business of said bank on October 12, 1904, there was due to the said The Canton State Bank from other banks and bankers Fifty-three thousand three hundred and eighteen and 29/100 ($53318.29) dollars, whereas in truth and in fact, and at the time well known to the said Corwin D. Bachtel cashier as aforesaid, that there was not due the said The Canton State Bank Fifty-three thousand three hundred and eighteen and 29/100 ($53318.29) dollars, but there was only due said bank from other banks and bankers the sum of Forty five thousand
6 ($45000.00) dollars, which was much less than said fifty three thousand three hundred and eighteen and 29/100 dollars ($5318.29) so reported in said entry by the said Corwin D. Bachtel as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for making False Entry in Report Oct. 15, 1904. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court, at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Indictment for Making False Entry in Report of Condition of Bank.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid being then and there the Cashier of The Canton State Bank, a banking Company organized and incorporated under the law of The State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking Company was located and engaged in the business
7 of banking in the City of Canton, in said County of Stark and State of Ohio, unlawfully and knowingly did make a false entry in a report of the said banking Company showing its condition at the close of business March 6th, 1905, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with a requisition made March 7th, 1905, by the said W. D. Guilbert, Auditor of the State *of the State* of Ohio to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the laws of the State of Ohio, with intent then and there to injure and defraud the said, The Canton State Bank, its directors and depositors and to deceive W. D. Guilbert

the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said banking company and to deceive William Wagner, William R. Zollinger and William H. Hoover part of the directors of said banking Company which said report is in the words and figures following, to wit:—

Dr. Resources.	Dollars. Cts.	Cr. Liabilities.	Dollars. Cts.
1. Loans on real estate,		1. Capital stock paid in.....	180000.00
2. All other loans and discounts.....	742807.81	2. Surplus.	10000.00
3. Over drafts	4925.98	3. Undivided profits...	7988.39
4. United States Bonds on hand		4. State bank notes outstanding	
5. State bonds on hand		5. Dividends unpaid.....	9.00
6. Other stocks, bonds & mortgages		6. Individual deposits	602555.45
7. Due from other banks and bankers.....	56270.74	7. Due to banks and bankers	
8. Real estate		8. Notes and bills rediscounted.....	30000.00
9. Furniture and fixtures..	1500.00	9. Bills payable	
10. Current expenses.....	1636.18		
11. Premium on bonds			
12. Cash items.....	10784.79		
13. Gold coin .... 2320 Silver coin..... 2813.34	5233.34		
14. National bank notes			
15. United States notes....	16394.00		
Total.....	849552.84	Total.....	849552.84

STATE OF OHIO, *County of Stark:*

Sworn to and subscribed before me this 9th day of March, 1905.

JOHN T. BLAKE,
Notary Public. [SEAL.]

I, Corwin D. Bachtel, of "The Canton State Bank," do solemnly swear that the above is true to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This Bank was incorporated May 17", 1900, under act of 1851, and commenced business May 21", 1900.

CORWIN D. BACHTEL, *Cashier.*

which said false entry so made as aforesaid by the said Corwin D. Bachtel cashier of the said The Canton State Bank was as follows:

"nites and bills rediscounted 30000.00," thereby making said
8 report to show that at the close of business of said bank on March 6, 1905, there were only notes and bills rediscounted to the amount of Thirty thousand ($30000.00) dollars, whereas in truth and in fact, at the time well known to the said Corwin D. Bachtel cashier as aforesaid, the notes and bills rediscounted by said bank at the close of business on March 6, 1905, were largely in excess of Thirty thousand ($30000.00) dollars, and amounted to more than One hundred thousand (100000.00) dollars, all of which was at the time he made said false entry in said report well known to the said Corwin D. Bachtel as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for making false entry in report of condition of bank March 9th, 1905. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Indictment for Making False Entry in Report.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present:—That Corwin D. Bachtel late of said County on or about the 15th day of October in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid being then and there the cashier of
9 The Canton State Bank, a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking Company was located and engaged in the business of banking in the City of Canton, in said County of Stark, and State of Ohio, unlawfully and knowingly did make a false entry in a report of the said banking Company, showing its condition at the close of business on October 12, 1904, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with the requisition made October 12, 1904, by the said W. D. Guilbert, Auditor of the State of Ohio, to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the law of the State of Ohio, with intent then and there to injure and defraud the said, The Canton State Bank, its directors and depositors and to deceive

W. D. Guilbert the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said banking Company and to deceive William Wagner and William R. Zollinger part of the directors of the said banking Company, which said report is in the words and figures following, to wit:—

Dr. Resources.	Dollars.	Cts.	Cr. Liabilities.	Dollars.	Cts.
1. Loans on real estate	666618	84	1. Capital stock paid in	180000	00
3. Overdrafts	1921	32	2. Surplus fund	19000	00
7. Due from other banks and bankers	53318	29	3. Undivided profits	7999	27
9. Furniture and fixtures	2000	00	6. Individual deposits	525051	02
10. Current expenses	122	62	8. Notes and bills rediscounted	15000	00
12. Cash items	11955	84			
13. Gold coin $4750 Silver coin $981.35	5731	35			
14. National bank notes & 15. United States notes	11382	00			
Total	747050	29	Total	747050	29

STATE OF OHIO,
County of Stark:

Sworn to and subscribed before me this 15th day of October, 1904, at 9 o'clock.

JOHN T. BLAKE,
Notary Public. [SEAL]

I, Corwin D. Bachtel, Cashier, of "The Canton State Bank," do solemnly swear that the above statement is true, to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This Bank was incorporated May, 1900, under act of 1851, and commenced business May 21", 1900.

CORWIN D. BACHTEL, *Cashier.*

which said false entry in said report so made as aforesaid, by the said Corwin D. Bachtel cashier of The Canton State Bank as aforesaid, is false in this, to-wit:—"notes and bills rediscounted 15000.00" thereby making said report to show that at the close of business of said bank on October 12, 1904, there were only notes and bills
10 rediscounted to the amount of Fifteen thousand ($15000.00) dollars, whereas in truth and in fact, and at the time well known to the said Corwin D. Bachtel cashier as aforesaid, said notes and bills rediscounted of said bank at the close of business on said 12th day of October, 1904, were more than the sum of Fifteen thousand ($15000.00) dollars, but were in fact and should have been reported as the sum of Thirty nine thousand ($39000.00) dollars, all of which was well known to the said Corwin D. Bachtel cashier as aforsaid, at the time he made said false entry in said report contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for making False Entry in Report Oct. 15, 1904. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk,* [SEAL.]

Indictment for Making False Entry in Report.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel late of said County on or about the 15th day of October in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier of The Canton State Bank, a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of
11 Ohio, and which banking Company was located and engaged in the business of banking in the City of Canton, in said County of Stark, and State of Ohio, unlawfully and knowingly did make a false entry in a report of the said banking Company showing its condition at the close of business on October 12, 1904, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with the requisition made October 12, 1904, by the said W. D. Guilbert, Auditor of the State of Ohio, to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the law of the State of Ohio, with intent then and there to injure and defraud the said, The Canton State Bank, its directors and depositors and to deceive W. D. Guilbert the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said banking Company and to deceive William Wagner and William R. Zollinger part of the directors of the said

banking Company, which said report is in the words and figures following, to-wit:—

Dr. Resources.	Dollars. Cts.	Liabilities.	Cr. Dollars. Cts.
1. Loans on real estate....	660618.84	1. Capital stock paid in.....	180000.00
3. Overdrafts.....	1921.32	2. Surplus fund.....	19000.00
7. Due from other banks and bankers.....	53318.29	3. Undivided profits.....	7999.27
9. Furniture and fixtures..	2000.00	6. Individual deposits	525051.02
10. Current expenses.....	122.62	8. Notes and bills rediscounted	15000.00
12. Cash items.....	11955.87		
13. Gold coin	4750.		
Silver coin.....	981.35		
14. National bank notes &			
15. United States notes.....	11382.00		
Total.....	747050.29	Total.....	747050.29

which said false entry so made as aforesaid, by the — Corwin D. Bachtel cashier of the said The Canton State Bank was as follows: "individual deposits 525051.02;" thereby making said report to show that at the close of business of said bank on Oct. 12, 1904, there were individual deposits in said bank amounting to Five hundred and twenty-five thousand and fifty-one and 02/100 ($525051.02) dollars, whereas in truth and in fact and at the time well known to the said Corwin D. Bachtel cashier as aforesaid, that the individual deposits in said bank at the close of business Oct. 12, 1904, was only Three hundred and forty-five thousand and sixty-eight and 96/100 ($345068.96) dollars, and should have been reported in not more than said sum of three hundred and forty-five thousand and sixty-eight and 96/100 ($345068.96) dollars, contrary to the
12 statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entry in Report Oct. 15, 1904. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Indictment for Making False Entry in Report.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel late of said County, on or about the 2nd day of April in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier of The Canton State Bank, a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of the State of Ohio, and which banking Company was located and engaged in the business of banking in the City of Canton in said County of Stark, and State of Ohio, and being in said county of Stark and State of Ohio, unlawfully and knowingly did make a false entry in a report of said banking Company showing its condition before the commencement of business on the first Monday of April, 1904, to W. D. Giul-
13 bert, Auditor of the State of Ohio, in compliance with the requisiton made March 10, 1904, by the said W. D. Guilbert Auditor of The State of Ohio to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the laws of The State of Ohio with intent then and there to injure and defraud the said The Canton State Bank its directors and depositors, and to deceive W. D. Guilbert the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said banking Company, and to deceive William Wagner and William R. Zollinger part of the directors of said banking Company, which said report is in the words and figures following, to wit:—

Dr.

Resources.	Dollars. Cts.
1. Loans on real estate	
2. All other loans and discounts	650456.33
3. Overdrafts	771.06
4. United States bonds on hand	
5. State bonds on hand	
6. Other stocks, bonds and mortgages	
7. Due from other banks and bankers	165321.66
8. Real estate	
9. Furniture and fixtures	2500.00
10. Current expenses	21.92
11. Premiums on bonds	
12. Cash items	15577.74
13. Gold coin $757.50 Silver coin 1376.97	2134.47
14. National bank notes &	
15. United States notes	33231.00
Total	870014.18

Cr.

Liabilities.	Dollars. Cts.
1. Capital Stock paid in	180000.00
2. Surplus fund	17000.00
3. Undivided profits	12016.85
4. State bank notes outstanding	
5. Dividends unpaid	53.10
6. Individual deposits	610944.23
7. Due to banks and bankers	
8. Notes and bills rediscounted	50000.00
9. Bills payable	
Total	870014.18

STATE OF OHIO, *County of Stark:*

Sworn to and subscribed before me this second day of April, 1904.

JNO. T. BLAKE,
Notary Public. [SEAL.]

I, Corwin D. Bachtel, Cashier, of "The Canton State Bank," do solemnly swear that the above statement is true, to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This Bank was incorporated May 17", 1900, under the act of 1851, and commenced business May 21", 1900.

CORWIN D. BACHTEL, *Cashier.*

which false entry so made as aforesaid, by the said Corwin D. Bachtel cashier of the said The Canton State Bank, is as follows:—"overdrafts 771.06" thereby making said report to show that before the commencement of business on the first Monday of April, 1904, there were only overdrafts in said bank to the amount of Seven
14 hundred and seventy-one and 06/100 ($771.06) dollars, whereas in truth and in fact, and at the time well known to the said, Corwin D. Bachtel cashier as aforesaid, on the first Monday of April, 1904, were more than Fifty thousand ($5000.00) dollars, which was largely in excess of said sum of seven hundred and seventy one and 06/100 ($771.06) dollars, so reported, all of which was at the time he made said false entry in said report well known to the said Corwin D. Bachtel cashier as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entry in Report April 2, 1904. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Indictment for Misapplication and Count for Embezzlement.

Revised Statutes, Secs. 7193–4, 7206–7–10–15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the year of our Lord one thousand nine hundred and SIX.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present:—That Corwin D. Bachtel late of said County on or about the 3rd day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, said Corwin D. Bachtel then and
15 there being the cashier of and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of The State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking company on or about March 3, 1905, and at the time of the willful misapplication of the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking company, and, he, the said Corwin D. Bachtel being such cashier of said banking company on or about said day, and in said city of Canton, Stark County, Ohio, did then and there willfully, unlawfully and fraudulently misapply certain moneys and funds of said banking company to the amount of three hundred and forty-two 55/100 ($342.55) dollars, by executing and delivering, on March 3rd, 1905, to said, The Canton State Bank, a certain check or draft, for the sum of Three Hundred and Forty-two and 55/100 Dollars ($342.55) in The Ohio Salt Company,

Wadsworth, Ohio, signed, The Swaim & Reed Stave & Lumber Co., by C. D. Bachtel, secretary and treasurer, he, the said C. D. Bachtel, being then and there the secretary and treasurer of said The Swaim & Reed Stave & Lumber Company, and being the said Corwin D. Bachtel cashier of said Banking Company, a copy of which check or draft is as follows:—

No. —. CANTON, OHIO, *March* 3, 1905.

At sight Pay to the order of the Canton State Bank, Three Hundred Forty-two and 55/100 dollars,
To The Ohio Salt Co., Wadsworth, O.

THE SWAIM & REED STAVE & LUMBER CO.,
B- C. D. BACHTEL, *Sec'y & Treas.*

No Protest.
Detach Before Presenting.
Report by Number.

and said check or draft was then and there accepted and received by said Corwin D. Bachtel on behalf of said The Canton State Bank, while acting in his said capacity, as said cashier, without consideration, and with the intent on the part of said Corwin D.
16 Bachtel, then and there, to hold said check or draft and not forward the same to the said The Ohio Salt Company, Wadsworth, Ohio, and which check or draft was held and not sent for payment for collection by said Corwin D. Bachtel to said, The Ohio Salt Company, Wadsworth, Ohio, and said The Ohio Salt Company, Wadsworth, Ohio, at said time was not indebted to said The Swaim & Reed Stave & Lumber Company, neither did the Swaim & Rees Stave & Lumber Company have at said time, any credit at said, The Ohio Salt Company, nor was anything of value ever received by said, The Canton State Bank, by reason of said check or draft, all of which was known at the time of the executing, delivering and acceptance of said check or draft as aforesaid, by said Corwin D. Bachtel and said Corwin D. Bachtel did on March 3, 1905, and at the time of said acceptance of said check or draft as aforesaid, credit The Swaim & Reed Stave & Lumber Company with the sum of Three Hundred Forty-two and 55/100 Dollars ($342.55) by reason of the execution, delivery and acceptance of said check or draft as aforesaid, on the books of said, The Canton State Bank, and said sum of Three Hundred Forty two and 55/100 ($342.55) dollars, credited as aforesaid, was afterwards paid out of said, The Canton State Bank by said Corwin D. Bachtel as cashier aforesaid, and received and used by said The Swaim & Reed Stave & Lumber Company, and all of said acts and things were then and there done by said Corwin D. Bachtel, with the intent then and there to injure and defraud said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, inquiring as aforesaid, on their said oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that Corwin D. Bachtel then and there being the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking company on or about March 3, 1905, and at the time of the embezzlement of the money of the said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D.
17 Bachtel at said time and place and being in said County of Stark and State of Ohio, on the 3rd day of March, 1905, unlawfully, feloniously and knowingly embezzled and converted to his own use, the moneys and funds of the said The Canton State Bank, to-wit:—the sum of three hundred and forty-two and 55/100 ($342.55) dollars, and which said sum is the same sum, amount and money referred to in the first count of this indictment, and which money was then and there under his control, care and custody as cashier of the said The Canton State Bank as aforesaid, by virtue of his said office and with the intent then and there on the part of him the said Corwin D. Bachtel cashier as aforesaid, to convert the same to his own use, and to then and there and thereby injure and defraud the said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication and Count for Embezzlement. A True Bill Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand — the seal of said court at Canton, Ohio, this 12th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

18 Indictment for making false entries in book of bank, to-wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly empaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn, late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporatoin, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said
19 book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, knowingly and unlawfully did write and make without authority of the directors of the said banking company, The

Canton State Bank, a false entry therein, under date of March 3, 1905, which was as follows:

" 3, 56½ W. L. Davis 4 " " 3
July 3, 3500.

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Three thousand five hundred ($3500.00) dollars for W. L. Davis, which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said W. L. Davis, and that said entry was false at the time they made the same, said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit:—Discount Register. A True Bill.
20 Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 12" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

21 *Indictment for Making False Entries on Books of Bank.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and C. H. Van Horn, known as Howard Van Horn late of said County, on or about the 4th day of January in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid said Corwin D. Bachtel then and there being the cashier of and said Charles Howard Van Horn then and there being the teller and bookkeeper of a certain Banking Company known as The Canton State Bank; a corporation duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and the making of the entry hereinafter mentioned was doing a banking business at the City of Canton, Stark County, Ohio, as a free banking Company, with intent then and there to injure and defraud said banking Company and Austin C. Brant, William Wagner, William R. Zollinger and W. H. Hoover directors of the same, and with intent to deceive the president and members of the board of directors of said Banking Company, did then and there, without authority from the directors of said banking company, willfully, unlawfully, knowingly and intentionally make the following false entry on Page 294 in a book of said banking company known and designated as "Journal No. 2" under date of January 4, 1905, to wit: "Bank of Pittsburg N. A. 445.67 595 3000-4040.67," thereby charging said Bank of Pittsburg N. A. with the sum of Four Thousand Forty
22 Dollars and Sixty-seven cents ($4040.67) and thereby making said book to show that said Bank of Pittsburg N. A. had received a deposit to the credit of said The Canton State Bank of Canton, Ohio, in the sum of Four Thousand Forty Dollars and Sixty-seven Cents ($4040.67) on said January 4, 1905, whereas in truth and in fact said entry should have been made as follows: "Bank of Pittsburg N. A. 445.67 595-1040.67, and whereas in truth and in fact said Bank of Pittsburg N. A. should only have been charged with having received the sum of One Thousand Forty Dollars and Sixty-seven Cents ($1040.67) on said January 4, 1905, and whereas in truth and in fact said Bank of Pittsburg N. A. only

received on deposit to the credit of said The Canton State Bank of Canton, Ohio, the sum of One Thousand Forty Dollars and Sixty-seven Cents ($1040.67) on said January 4th, 1905, all of which was fully known by said Corwin D. Bachtel and Charles Howard Van Horn at the time of making said entry contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries January 4th, 1905. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

23 Indictment for making false entries on book of bank, to-wit:

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn, late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the

Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904), pertaining to the transaction of
24 the business of said banking company, and which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of
March 3, 1905, which was as follows:

"	3	59¼ Citz. Heat L. & P. Co.	4 Mos	"	3.
July	3	6000.			

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to six thousand ($6000.00) dollars for The Citizens Heat, L. & P. Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note, and that said entry was false at the time they made the same, and said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

25 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

26 Indictment for making false entries in book of bank, to wit:

Discount Register.

Revised Statutes, Secs. 7193-4, 72067-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking

company, and which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier,
27 teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of March 3, 1905, which was as follows:

Mch. 3 5½ Davis Ry. Coal Co. 4 mos. " 3
July 3 5000.

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars, for The Davis Ry. Coal Co., which entry was falsely made at the time by the said The Canton State Bank, and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said The Davis Ry. Coal Co. and at the time they made the same, said entry was so falsely made without the authority from the directors of the said banking Company, The Canton State Bank as aforesaid, and with the intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

28 Indictment for making false entries in book of bank, to wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company or or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said book was then and there in charge and under the control of them the said Corwin D.
29 Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without the authority of

the directors of the said banking company, The Canton State Bank, a false entry therein under date of
March 3, 1905, which was as follows:

" 3, 54½ Davis Ry. Coal Co. 3 " 3
June 3, 5000.

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars, for The Davis Ry. Coal Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said, The Davis Ry. Coal Co., and that said entry was false at the time they made the same, and said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

30 I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

By JACOB J. WISE, *Clerk.* [SEAL.]

31 Indictment for making false entries in book of bank, to wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn late of said County on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back, the Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said book was then and there in charge and under
32 the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of
March 3, 1905, which was as follows:

"	3,	58½	Clev'd Brick Co.	90 dys. "	3 "
"	1,	5000.			

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars for The Clev'd Brick Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note, and that said entry was false at the time they made the same, and said entry was so falsely made contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

33 Indictment for false entry in book of bank, to wit:—

Journal No. 2.

Revised Statutes, Secs. 7193–4, 7206–7–10–15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said

Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in Revised Statutes of Ohio, and, he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking Company on or about March 9, 1905, and at the time of grievances hereinafter complained of, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said offices and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking Company with a certain book, to wit: "Journal No. 2," pertaining to the transaction of the business of said banking company, which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as such cashier, teller and clerk aforesaid, in the mak-
34 ing of correct entries and keeping a correct record of the transaction of the said bank, and the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did write and make without the authority from the directors of the said banking company, The Canton State Bank, a false entry therein, on Page 334 under the head of Friday, and at the end of line on which have written, loans and discounts Sunds, the figure 6 in front of the figures 1592.25, thereby making it appear that the loans and discounts sundries were 61592.25 instead of 1592.25 as it was originally in said book which said entry was false and known to be false to the said Corwin D. Bachtel and Charles H. Van Horn, cashier, teller and clerk as aforesaid, at the time they made the same and it was made without the authority from the directors of the said banking company, The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the Banking Co. and William Wagner, and William R. Zollinger directors of the said The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entry in Book of Bank, to wit: Journal No. 2. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court, at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

35 *Indictment for Abstraction, Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That William L. Davis and Corwin D. Bachtel, late of said County, on or about the 13th day of December in the year of our Lord, one thousand nine hundred and four, at the County of Stark aforesaid, said William L. Davis being then and there an officer, to wit: Vice President and a director of The Canton State Bank, a corporation, incorporated and organized as a banking Company under the law of the State of Ohio, known as the free banking act passed 1851, by the Legislature of Ohio, and which banking Company, on or about the 13th day of December, 1904, and at the time of the abstraction of the personal property of said banking Company, to wit: the certificates of stock as hereinafter described, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking Company, and said Corwin D. Bachtel being then and there and at the time an officer, to wit: the cashier and a director of The Canton State Banking Company, certain property, to wit: certain certificates for 350 shares of the capital stock of said banking Company; to wit: Certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares Certificate No. 244 for 40 shares and Certificate No. 256 for ten shares which said certificates of stock

had theretofore been issued by the said, The Canton State Bank to the said William L. Davis, and which said certificate of stock had theretofore been hypothecated by the said William L. Davis
36 with the said The Canton State Bank, as security for moneys theretofore received by the said William L. Davis from the said, The Canton State Bank, and which said certificates were of the face value of Fifty ($50.00) dollars per share, and upon which had been paid in thereon, the sum of Thirty ($30.00) per share, and which said certificates were then and there of the value of One hundred and five thousand ($105000.00) dollars, of the personal property of and belonging to the said, The Canton State Bank, they the said William L. Davis and Corwin D. Bachtel officers of the said, The Canton State Bank as aforesaid, did, at the time and date aforesaid, and at the County aforesaid, with the intent on their part to injure and defraud the said, The Canton State Bank, unlawfully and fraudulently abstract from the possession of the said, The Canton State Bank, said certificates of stock heretofore described without the authority of any of the other officers and directors of the said, The Canton State Bank, and thereby did defraud and injure the said The Canton State Bank as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that the said William L. Davis, Vice President and a Director of the said, The Canton State Bank as aforesaid, and Corwin D. Bachtel cashier and director of the said, The Canton State Bank as aforesaid, late of said County aforesaid, at the time and date aforesaid, and with the intent aforesaid, did willfully misapply certain property, to wit: certain certificates of stock and being the same certificates of stock as described in the first count of this indictment, to wit: certain certificates for 350 shares of the capital stock of the said The Canton State Bank, to wit: Certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares, Certificate No. 244 for 40 shares, and Certificate No. 256 for 10 shares, to the use and benefit of the said William L. Davis without the assent of the said incorporated Company, the said, The Canton State Bank, and without the assent of any owner or owners of said certifi-
37 cates, which said personal property had then and there come into the possession and care of the said William L. Davis and Corwin D. Bachtel by virtue of their employment as such officers aforesaid, of said incorporated Company, which said certificates of stock had theretofore been hypothecated by the said William L. Davis to the said The Canton State Bank, as security for money theretofore received by the said William L. Davis from the said The Canton State Bank.

Third Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the

authority of the State of Ohio aforesaid, and at the time and place aforesaid, do further find and present, that the said William L. Davis, Vice President and a director of The Canton State Bank as aforesaid, and Corwin D. Bachtel the cashier *of* a director of The Canton State Bank as aforesaid, late of said county aforesaid at the time and date aforesaid, and with the intent aforesaid, did unlawfully and fraudulently embezzle and convert to the use of said William L. Davis aforesaid, certain property, to wit: certain certificates for 350 shares of the capital stock of the said The Canton State Bank, and which are the same certificates of stock as described in the first and second count of this indictment, to-wit: certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares, Certificate No. 244 for 40 shares, and Certificate No. 256 for 10 shares, without the assent of the said The Canton State Bank, their employer as aforesaid, and without the assent of any owner or owners of said personal property which said personal property had then and there come into the possession and care of the said William L. Davis and Corwin D. Bachtel by virtue of their employment as such officers as aforesaid, of said incorporated Company, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Abstraction, Misapplication and Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

38 I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 13th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

39 *Indictment for Willful Assignment of Bonds with Counts for Abstraction, Willful Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel late of said County, on or about the 10th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, said Corwin D. Bachtel then and there being the cashier of and a director of a certain banking Company known as The Canton State Bank, a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking Company on or about March 10, 1905, and at the time of the assigning of the bonds and doing of the things hereinafter mentioned was doing a banking business at the city of Canton, Stark County, Ohio, as a free banking Company, with the intent then and there to injure and defraud said banking company, and with the intent to injure and defraud Austin C. Brant, William Wagner, William R. Zollinger and William H. Hoover, directors of said banking Company, without authority from the directors of said banking Company, *without authority from the directors of said banking Company* assign to The Merchants National Bank of Massillon, Stark County, Ohio, certain bonds of said banking company of the value of Five thousand ($5000.00) dollars, and which bonds were numbered 15 and 16 respectively, and which bonds had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws
40 of the State of Ohio, and hypothecated by the said, The Cleveland Brick Co., with the said The Canton State Bank as security for moneys theretofore received by the said, The Cleveland Brick Co., from said The Canton State Bank and which bonds had come into his possession and under his control by virtue of his office as cashier of said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring at the time and place aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that William L. Davis, late of the county aforesaid, and at the time a

director of said The Canton State Bank, before and at the time of said assignment of said bonds as aforesaid, by said Corwin D. Bachtel, March 18, 1906, and at the county aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, to assign said bonds in manner and form as aforesaid, well knowing that said Corwin D. Bachtel was the cashier *of* a director of the aforesaid banking Company, and that said banking Company was incorporated and organized under the aforesaid laws of the State of Ohio, and doing a banking business at said time in the city of Canton, Stark County, Ohio, under said free banking act.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and at the time and place aforesaid, and by the authority of the State of Ohio aforesaid, do further find and present, that said Corwin D. Bachtel cashier and director of said, The Canton State Bank, as aforesaid, late of said county aforesaid, at the time and date aforesaid, and with the intent aforesaid, did willfully misapply certain bonds of said banking Company of the value of Five Thousand ($5000.00) dollars, which bonds were numbered 15 and 16 respectively, and had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws of the State of Ohio, and hypothecated by the said The Cleveland Brick Co., to the said The Canton State Bank, as securities for moneys theretofore
41 received by the said, The Cleveland Brick Co., from said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, at the time and place aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that William L. Davis, late of said county aforesaid, and at the time a director of the said, The Canton State Bank, before and at the time of said willful misapplication of said bonds by said Corwin D. Bachtel as aforesaid, at the County aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, of The Canton State Bank to willfully misapply said bonds in the name and form as aforesaid, well knowing at the time that said Corwin D. Bachtel was the cashier and a director of said banking company, and that said banking Company was incorporated and organized under the free banking act of the laws of Ohio, and doing a banking business at the city of Canton, Stark County, Ohio, at said time.

Third Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, at the time and place aforesaid, do further find and present, that said Corwin D. Bachtel the

cashier of and a director of The Canton State Bank as aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the county aforesaid, with the intent on the part of said Corwin D. Bachtel as aforesaid, did unlawfully and fraudulently abstract from the possession of the said The Canton State Bank certain bonds of said banking Company of the value of Five Thousand ($5000.00) dollars, which bonds were numbered 15 and 16 respectively, and which bonds had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws of the State of Ohio, and had theretofore been hypothecated by the said The Cleveland Brick Co., to the said The Canton State Bank as security for moneys theretofore received by the said The
42 Cleveland Brick Co., from The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, in the name and by the authority of the State of Ohio aforesaid, at the time and place aforesaid, do further find and present, that William L. Davis, late of said county aforesaid, and at the time a director of said The Canton State Bank as aforesaid, at the County aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, to abstract said bonds in manner and form aforesaid, well knowing at the time that said Corwin D. Bachtel was cashier of said banking Company, and that said banking company was incorporated and organized under the free banking act of the State of Ohio, and was doing a banking business at the City of Canton, Stark County, Ohio.

Fourth Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, and in the name and by the authority of the State of Ohio aforesaid, on their oath aforesaid, and at the time and place aforesaid, do further find and present thar said Corwin D. Bachtel cashier of The Canton State Bank aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the County aforesaid, with the intent aforesaid, did unlawfully and fraudulently embezzle and convert to his own use certain bonds of said banking company, which bonds were numbered 15 and 16 respectively, and had theretofore been issued by The Cleveland Brick Co., a corporation, incorporated and organized under the laws of The State of Ohio, and which bonds had theretofore been hypothecated by the said The Cleveland Brick Co., to the said, The Canton State Bank as security for moneys theretofore received by the said The Cleveland Brick Co., from said The Canton State Bank, and which bonds were then in the possession of and under the control of said Corwin D. Bachtel by virtue of his position and employment as cashier of said banking Company. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, and in the name and by the authority of the State of Ohio aforesaid, at the time and place
43 aforesaid, do further find and present that William L. Davis late of the County aforesaid, and at the time a director of the said The Canton State Bank before and at the time of said em-

bezzlement of said bonds by said Corwin D. Bachtel as aforesaid, at the County aforesaid, did feloniously, willfully, maliciously, fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid of The Canton State Bank as aforesaid, to embezzle said bonds in manner and form aforesaid, well knowing at said time that said Corwin D. Bachtel was the cashier of a director of said The Canton State Bank, and that said The Canton State Bank was a corporation, incorporated and organized under the free banking act of the laws of the State of Ohio, and was doing a banking business in the city of Canton, Stark County, Ohio, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for willful assignment of bonds with counts for abstraction, willful misapplication and embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court, at Canton, Ohio, this 13th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

44 *Indictment for Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel and William L. Davis, late of said County on or about the 2nd day of May in the year of our Lord one thousand nine hundred

and five, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company, and which banking company on or about May 2nd, 1905, and at the time of the misapplication of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 2nd day of May, 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank Twenty eight hundred and fifty seven and 15/100 dollars ($2857.15), which were then and there under their control, care and custody as cashier and a director respectively, to the use and benefit of him the said William L. Davis, with intent to
45 injure and defraud the said The Canton State Bank of the same, and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank, as aforesaid, did on or about the 2nd day of May, 1905, unlawfully, feloniously knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand eight hundred and fifty seven and 15/100 ($2857.15) dollars, and which sum of Two thousand eight hundred and fifty-seven and 15/100 ($2857.15) dollars, and which sum of two thousand eight hundred and fifty-seven and 15/100 ($2857.15) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care and custody as cashier and a director as aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel, cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton

State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, con-
46 trary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for misapplication of money—count for embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

47 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel and William L. Davis, late of said County, on or about the 15th day of December in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being

then and there a vice president and a director of said banking company, and which banking company on or about the 15th day of December, 1904, and at the time of the misapplication of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 15th day of Dec., 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank, to wit, the sum of Twenty four hundred and thirty two dollars ($2432), which were then and there under their control, care, custody as cashier and a director respectively, to the use and benefit of him the said William L. Davis, with intent to injure and defraud the said The Canton State Bank
48 of the same, and which money had then and there been received into, and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank as aforesaid, did on or about the 15th day of December, 1904, unlawfully, feloniously, knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand four hundred and thirty-two ($2432.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care, custody as cashier and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis, director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of the said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of money—count for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

49 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

50 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark, and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and William L. Davis, late of said County, on or about the 18th day of July in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company, and which banking company on or about the 18th day of July, 1904, and at the time of the misapplication of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 18th day of July, 1905, unlawfully, feloniously and knowingly did misapply the

moneys of the said The Canton State Bank, to wit, the sum of Two Thousand dollars ($2000) which were then and there under
51 their control, care and custody as cashier and a director respectively, to the use and benefit of him the said William L. Davis, with intent to injure and defraud the said The Canton State Bank of the same, and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank as aforesaid, did on or about the 18th day of July, 1904, unlawfully, feloniously, knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand ($2000.00) dollars, and which sum of Two thousand ($2000.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care and custody as cashier and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis, director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, contrary to the Statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of
52 Money—Court for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a

full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand — the seal of said Court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

53 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and William L. Davis, late of said county, on or about the 16th day of December in the year of our Lord one thousand nine hundred and four, at the County of *of* Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company and which banking company on or about the 16th day of December, 1904, and at the time of the embezzlement of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 16th day of December, 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank, to wit Twenty one hundred and fifty dollars ($2150) which were then and there under their control, care and custody as cashier and a director respectively,
54 to the use and benefit of him the said William L. Davis, with intent to injure and defraud the said The Canton State Bank of the same, and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank as aforesaid, did on or about the 16th day of December, 1904, unlawfully, feloniously, knowingly and willfully embezzle the moneys of the said The Canton State Bank, the sum of Two thousand one hundred and fifty ($2150.00) dollars, and which said sum of Two thousand one hundred and fifty ($2150.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money as referred to in the first count of this indictment was, then and there under their control, care and custody as cashier and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

55 Endorsed as follows: Indictment for Misapplication of Money—Count for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand — the seal of said court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

56 *Indictment for Willfully Misapplying the Money, Funds, and Credits of the Canton State Bank, with Count for Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on the 1st day of July in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid said Corwin D. Bachtel then and there being the cashier of and a director of a certain banking Company, known as The Canton State Bank, a corporation duly incorporated and organized under the law of the State of Ohio, known as and being the free banking Company on or about July 1, 1904, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company did then and there willfully, unlawfully and fraudulently misapply to the use of The Miller Co., certain moneys, funds and credits of said banking Company to the amount of Two Thousand ($2000.00) dollars, then in the hands of The First National Bank of Cleveland, Ohio, and owing by said The First National Bank of Cleveland, Ohio, to said The Canton State Bank, by signing his name as cashier to, and executing and delivering to The Miller Co., a certain draft or check, a copy of which is as follows:—

No. 4782.

CANTON, OHIO, *July 1st,* 1904.

The Canton State Bank

Pay to the order of Miller Co. $2000.00, Two thousand Dollars.
First National Bank, Cleveland, O.

C. D. BACHTEL, *Cashier.*

57 and which draft or check so signed, executed and delivered as aforesaid was without any consideration therefor whatsoever, and which draft or check was paid by said The First National Bank of Cleveland, Ohio, out of said moneys funds and credits aforesaid, and charged by said The First National Bank of Cleveland,

Ohio, to said The Canton State Bank, and said draft or check at said time, was signed, executed and delivered and said moneys, funds and credits willfully, misapplied as aforesaid, with the intent on the part of said Corwin D. Bachtel to injure and defraud said The Canton State Bank, the President thereof Austin C. Brant and certain directors thereof, William Wagner, William R. Zollinger and W. H. Hoover and the stockholders, depositors and creditors of said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, inquiring as aforesaid, on their said oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that Harvey H. Miller late of the county aforesaid, before and at the time the said moneys, funds and credits of said The Canton State Bank were willfully misapplied by the said Corwin D. Bachtel as aforesaid, at the time and date aforesaid, and at the County aforesaid, did feloniously, willfully, fraudulently and maliciously aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, of the said The Canton State Bank as aforesaid, the said moneys, funds and credits aforesaid, in manner and form aforesaid, to willfully misapply as aforesaid, he, the said Harvey H. Miller, then and there well knowing that he, the said Corwin D. Bachtel to be then and there the cashier of the said, The Canton State Bank as aforesaid, and that said The Canton State Bank was incorporated and organized and doing business as a banking company as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the state of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Willfully misapplying the money funds and credits of The Canton State Bank. A True Bill. Joseph Fulk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with
58 the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

59 *Indictment for Misapplication of Funds of The Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7183-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths in the name and by the authority of the State of Ohio, do find and present: That Corwin D. Bachtel late of said County, on the 13th day of August in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier and a director of a certain Banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking company on or about the 13th day of August, 1904, and at the time of the willful misapplication of the moneys, funds and credits of said Bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office, the general superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 13th day of August, 1904, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as cashier aforesaid, by virtue of his said office, with intent then and there on the part of him the said Corwin D. Bachtel cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty
60 three hundred and fifty ($2350.00) dollars, and with the further intent on the part of the said Corwin D. Bachtel, cashier as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft when so cashed was in the words and figures following, to wit:—

$2350. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty three hundred and fifty dollars with exchange Value received and charge to account of

THE MILLER CO.,
By H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co. was not indebted in the sum of Twenty-three hundred and fifty ($2350.00) dollars, nor in any other sum approximating Twenty-three hundred and fifty dollars ($2350.00) to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to the Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel, cashier as aforesaid, was then and there made from and by the use of said moneys, funds and credits of the said The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by
61 the cashing of said draft to H. H. Miller, Tr., who is the said Harvey H. Miller, of *of* the said The Miller Co., the sum of Twenty-three hundred and fifty ($2350.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Corwin D. Bachtel, cashier as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty dollars ($2350.00) became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton State Bank, and the Jurors of the Grand Jury aforesaid, do further find and present that Harvey H. Miller late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank, as aforesaid, on or about the 13th day of August, 1904, aid, abet, incite and procure the said Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to-wit: the sum of Twenty three hundred and fifty ($2350.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Corwin D. Bachtel to

be then and there the cashier of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the said Corwin D. Bachtel aforesaid, late of the county aforesaid at the time and date aforesaid, and at the County aforesaid, being then and there the cashier of a certain banking Company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Com-
62 pany, on or about August 13th, 1904, and at the time of willfully misapplying the moneys funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office as cashier, the general superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his contral, care and custody as cashier as aforesaid, by virtue of his said office with intent then and there on the part of him the said Corwin D. Bachtel, cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty-three hundred and fifty ($2350.00) dollars, and with the further intent on the part of him the said Corwin D. Bachtel cashier as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$2350.00. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty-three hundred and fifty dollars, with exchange. Value received and charge to account of

THE MILLER CO.,
Per H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co.

which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Twenty-

three hundred and fifty ($2350.00) dollars, nor in any other
63 sum approximating Twenty-three hundred and fifty ($2350.00) dollars, to the said The Miller Co., all of which was well known to the said Corwin D. Bachtel, cashier as aforesaid, of The Canton State Bank, as aforesaid, at the time he cashed said draft aforesaid, nor was there any consideration of any kind or value moving from the said, The Miller Co., to the Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, at the time he cashed said draft as aforesaid, The said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel as aforesaid, was then and there made from and by the use of the moneys, funds and credits of the said, The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Twenty-three hundred and fifty ($2350.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit and upon the order of the said, The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty ($2350.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of Stark, in the State of Ohio aforesaid, did unlawfully willfully, knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about August 13th, 1904, aid, abet, incite and procure the said, Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit:—the sum of Twenty-three hundred and fifty dollars, ($2350.00) as aforesaid, he, the
64 said Harvey H. Miller, then and there well knowing the said Corwin D. Bachtel to be then and there cashier of the said, The Canton State Bank, as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of funds and credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

65 Journal B, Page 461.

And thereupon at this same term and date, to wit:—

Be it remembered that on this day, at the Court House, Court Room Number 2, at the city of Canton, in said county, R. Frank Wilson, the sheriff of said county having now appeared with the body of said Corwin D. Bachtel before the undersigned judge of said court in pursuance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Corwin D. Bachtel before the judges of our said Circuit Court, or any one of them, at the same place on Saturday the 16th day of June, 1906, at 9 o'clock A. M. unless the said Corwin D. Bachtel shall enter into a recognizance to the State of Ohio, in due form to appear before said judges or any one of them at that time and place, and abide any order that may be made by them in the premises, in the sum of Seven Thousand dollars, with sureties to my acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, Ohio, this June 11th 1906.

T. T. McCARTY,
Judge of the Circuit Court,
Stark County, Ohio.

And thereupon at this same term and date to-wit:—

Journal B, Page 461.

This day came Corwin D. Bachtel and with D. S. Sommer, G. P. Craig, A. T. Stone, Helen M. Bachtel, John Skeeles and J. H. Bachtel as his sureties entered into a recognizance before the court in the sum of Seven Thousand Dollars, which recognizance reads and is in the words and figures folowing to wit:

"Be it remembered that on the 11th day of June A. D. 1906 personally appeared before Thomas D. McCarty, one of the Judges of said Court and acknowledged themselves to owe to the State of Ohio the penal sum of $7000.00 to be levied on their goods and chattels lands and tenements, if default be made in the condition following, to wit:—The condition of the above obligation is such

that if the said Corwin D. Bachtel shall appear before the Judges of said Circuit Court or any one of them on Saturday, June 16" 1906 at 9 o'clock A. M. at the Court House in Court Room No. 2 in said County and abide the further order and judgment of said Judges or any one of them and not depart without leave, then this obligation to be void, otherwise to be in full force and effect.

66

CORWIN D. BACHTEL.
D. S. SOMMER.
G. P. CRAIG.
A. T. STONE.
HELEN M. BACHTEL.
JOHN SKEELES.
J. H. BACHTEL.

Approved June 11th, 1906.

JACOB J. WISE, *Clerk.*

And afterwards on the 16th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers to wit:—

Journal B, Page 464.

This cause came on for hearing before Hon. Thos. T. McCarty, one of the said Judges of said Circuit Court, upon the motion of the defendant, Corwin D. Bachtel, for a continuance upon consideration whereof the court continues this cause until Monday, June 18th, 1906 at 8:30 o'clock A. M. at the Court House, Canton, Ohio. The bond given herein to remain in full force and effect.

And afterwards on the 18th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 468.

This cause came on to be heard at Chambers after the February Term 1906, to-wit—On June 18th, 1906, before Honorable T. T. McCarty, one of the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant Corwin D. Bachtel for a Writ of *Habeas Corpus* and upon the return and exhibits attached thereto of R. Frank Wilson as sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of counsel, said Judge finds that the said applicant Corwin D. Bachtel was at the time of the filing of said application in the custody of R. Frank Wilson as Sheriff of Stark County, Ohio, by virtue of an order of Court of Common Pleas of said county for his detention and imprisonment in the jail of said County to await his trial upon indictments found and returned by the Grand Jury of said Stark County against the said Corwin D.

Bachtel charging him with having committed certain offenses set forth in said indictments contrary to Section 30 of an act entitled "An Act to authorize Free Banking," passed by the General
67 Assembly of the State of Ohio on March 21st, 1851, as the same was amended on April 24th, 1879, and now known as Section (3821-85) of the annotated statutes of Ohio. And the said Judge finds that said Section 30 of said Act is not in contravention of Article 1, of Sections 1 and 2 and of Article 2, Section 26 of the Constitution of Ohio and that it is not in contravention of the 14th Amendment of the Constitution of the United States as alleged by the said Corwin D. Bachtel in his said application and the Court further finds that said Corwin D. Bachtel is not and was not at the time of the filing of said application unlawfully detained by the respondent R. Frank Wilson as sheriff of said Stark County and that the application of said Corwin D. Bachtel for a Writ of *Habeas Corpus* should be dismissed. It is further ordered, con, sidered and adjudged by said Judge that the application of the said Corwin D. Bachtel for said Writ of *Habeas Corpus* be dismissed and that said Corwin D. Bachtel be remanded to the custody of said R. Frank Wilson respondent as sheriff of Stark County, Ohio, and by virtue of said orders of the Court of Common Pleas to be by him held for trial under the indictments set up and referred to in these proceedings. It is further considered that the said Corwin D. Bachtel pay the costs of these proceedings taxed at $—— and for which execution is awarded against him and to all of the findings, orders and judgments aforesaid, said Corwin D. Bachtel now here excepts.

T. T. McCARTY.

Done at Canton, Ohio, this 18th day of June A. D. 1906.

And afterwards on the 18th day of June A. D. 1906 there was duly filed in the Clerk's office of said court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following to-wit:—

Mandate from Supreme Court Filed.

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, of the Term of January, A. D. 1906, to-wit, Monday, June 18th.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

On motion of the plaintiff in error and for good cause shown, it is hereby ordered by the court that the execution of the judgment herein be suspended, upon plaintiff in error giving an undertaking in the sum of $7,000.00, subject to the approval of the Clerk
68 of Courts of Stark County, Ohio, until the final determination of this action in this Court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the records of said Court, to wit: from Journal No. 21, Page 130.

In Witness Whereof I have hereunto subscribed my name and affixed the Seal of said Supreme Court, this 18th day of June A. D. 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

And thereupon on this same day there was duly filed in the Clerk's office of said court, a certain bond in this cause, which bond reads and is in the words and figures following to wit:—

Bond Filed.

Recognizance for Suspension of Execution of Sentence.

Revised Statutes, Section 7322.

THE STATE OF OHIO
vs.
CORWIN D. BACHTEL.

In Supreme Court of Ohio.

Error.

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, That on the 18th day of June A. D. 1906, Corwin D. Bachtel and John Skeeles, A. T. Strong, G. P. Craig, D. S. Sommer, J. H. Bachtel Helen M. Bachtel his sureties personally appeared before Jacob J. Wise, Clerk of Courts in and for the County of Stark aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements if default be made in the condition following, to wit: The condition of this recognizance is such, that if the above bound Corwin D. Bachtel shall personally be and appear before the Supreme Court of Ohio until the above case in error of said Corwin D. Bachtel is determined, and abide the judgment or sentence of the Court, and not depart without leave then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

CORWIN D. BACHTEL.
JOHN SKEELES.
A. T. STONE.
G. P. CRAIG.
D. S. SOMMER.
J. H. BACHTEL.
HELEN M. BACHTEL.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk.*

And afterwards on the 2nd day of July A. D. 1906 there was duly filed in the Clerk's office of said court a certain Mandate
69 from Supreme Court in this cause, which Mandate from Supreme Court reads and is in the words and figures following to-wit:—

Mandate from Supreme Court Filed.

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said Court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and

issued under said indictments, and that said imprisonment
70 was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment of the Constitution of the United States, or either of them; that in his petition in error to this Court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking as amended April 24, 1879, section (3821-85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one Article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and valid for the reasons so as aforesaid assigned. On consideration whereof, it is decided and adjudged that said statute and indictment are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment to the Con-
71 stitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court, be and the same is hereby dissolved, and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended, taxed at $—. Ordered, that a special mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the seal of said court, this twenty-fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of our Supreme Court of Ohio, in the case of Corwin D. Bachtel *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Lawson E. Emerson, Clerk of our said Supreme Court of Ohio, at Columbus, this 24th day of July, 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

72 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 67 is a true copy of the Record in cause No. 718 and from page 67 to page 71 is a certified copy of the Mandates from the Supreme Court and the Supercedeas Bond filed in cause No. 718—In the matter of the Application of Corwin D. Bachtel for Writ of *Habeas Corpus* as the same appears upon the Records of said court, and I further certify that I have carefully compared said foregoing copy with the original Record, and that the same is a full and correct transcript thereof.

Witness my hand and the seal of said court, at Canton, Ohio, this 15 day of September, A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk*.

73 Office of the Secretary of State.

COLUMBUS, OHIO, *June* 18, 1906.

It is hereby certified that the following statement showing the names and years of incorporation of banking institutions under the various banking acts passed by the General Assembly is approximately correct. These facts have appeared in the annual reports of the Secretary of State printed and distributed by authority of law, but to put the information into more convenient form, I have by request caused this statement to be prepared. It is well known that

many of these banks have ceased to exist, but the reports of this office do not furnish information upon that subject, the law requiring all reports from banks during their existence to be made to the Auditor of State and not to this office.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.

[The Seal of the Secretary of State of Ohio.]

LEWIS C. LAYLIN,
Secretary of State.

The following banks were incorporated under "an act to authorize free banking" passed March 21, 1851.

Incorporated in 1851.

1. Piqua County Bank
2. The Stark County Bank
3. Iron Bank of Ironton
4. Merchants Bank of Massillon
5. Springfield Bank of Springfield
6. Bank of Marion
7. Forest City Bank
8. The Union Bank of Sandusky City
9. The Miami Valley Bank
10. The Champaign County Bank
11. Savings Bank of Cincinnati
12. The Bank of Commerce, Cleveland
13. Drovers Bank of Hudson
14. Northwestern Bank of Ohio
15. Merchants of Toledo
16. Franklin Bank of Portage County
17. Tradesmen Bank of Cleveland
18. Bank of Medina
19. Bank of Urichville
20. Citizens of Steubenville
21. Exchange Bank of Cleveland
22. Bay City Bank of Sandusky
23. Cuyahoga Bank
24. Commercial Bank of Akron
25. Wool Growers Bank.

74 Incorporated in 1857.

26. Seneca County Bank.
27. Bank of Delaware.

Incorporated in 1858.

28. Mechanics Bank of Salem.
29. Bank of Ohio Valley.

Incorporated in 1859.

30. Farmers Bank of Cambridge.
31. Marine Bank.

Incorporated in 1861.

32. Mt. Vernon Bank.

Incorporated in 1862.

33. Mt. Gilead Bank.
34. La Fayette Bank of Cincinnati.

Incorporated in 1864.

35. Franklin Bank of Cincinnati.

Incorporated in 1868.

36. Commercial Bank of Cincinnati.

Incorporated in 1870.

37. Bank of Portsmouth.

Banks Incorporated under Free Banking Act, Amended April 24th, 1879.

Incorporated in 1879.

Commercial Bank of Cincinnati, June 20th.
(The articles in corporation recite the re-organization of this bank under the act of 1879.)

Incorporated in 1884.

The Farmers Bank of Mechanicsburg, March 4th.
Merchants' and Farmers Bank, Hicksburg, April 5th.
The Lancaster Bank, May 16.
The Mansfield Savings Bank, May 29th.

Incorporated in 1890.

Bank of Marysville, September 18, Vol. 43, p. 464.
Roseville Company Bank.

Incorporated in 1891.

Geo. D. Harter Bank, October 1st.

Incorporated in 1892.

Erie County Banking Company, Vermilion, Vol. 54, p. 398.

75 Incorporated in 1892—Cont.

Peoples Banking Company, Louisville, Vol. 54, 492.
Peoples Deposit Bank, Mineral Point, June 14.
Bank of Wellston, June 1st, Vol. 82, p. 98.
Citizens Bank of McConnelsville.
Citizens Bank of Yellow Springs.

Incorporated in 1893.

Lochard Banking Company, Williamsburg.
Peoples Bank Company, Lewisburg.
Farmers Bank of West Liberty.
Citizens Bank of Shelby.

Incorporated in 1900.

Canton State Bank.

Incorporated in 1901.

Citizens Bank, Higginsboro.

Incorporated in 1902.

Edgerton State Banking Company, December 11, Vol. 93, p. 382.
Licking County Bank, June 6th, Vol. 90, p. 560.
Oak Hill Savings Bank Co., Nov. 5th, Vol. 93, p. 449.
Peoples Banking Company, Hollinsburg, Oct. 25, Vol. 93, p. 207.
Cooksville Banking Company.
Liberty Bank Company, Ada.
La Rue Bank Company, La Rue, Ohio.
Peoples Bank, Frazierburg.
Farmers Bank Company of Arcanna.
Vinton Bank Company.

Incorporated in 1903.

Berbholz State Banking Company, March 5, Vol. 97, p. 94.
Bank of Wren Company, April 22-May 17, 1904, Vol. 99, p. 293.
Kunkle State Banking Company, June 8th, Vol. 93, p. 675.
Peoples Bank Company of Amsterdam.
Massillon State Banking Company.
Citizens Banking Company of Felicity.
Citizens Banking Company of Waynesville.
Peoples Banking Company, Salineville.
Hebron Bank Company.
Farmers Bank of Granville.

Incorporated in 1904.

Mount Victory, July 15th, Vol. 99, p. 417.
State Bank of Moscoll, August 29, Vol. 100, p-. 518-520.

Colonial Bank Company of Columbus.
Citizens Bank Company of Beverly.
Commercial Bank of Kenton.
Farmers Bank of Springsboro.
Marengo Bank Company.
Peoples Bank Company of Nelsonville.
Peoples Bank Company of Pataskala.
Farmers & Merchants Bank of Millersburg.

Incorporated in 1905.

Portsmouth Banking Company, Nov. 9, Vol. 110, p. 312.
Peoples Banking Company of Versailles, July 10, Vol. 109, p. 262.
Sardinia Bank Company, May 6th, Vol. 109, p. 106.
Security Savings Bank Company, April 26th, Vol. 109, p. 64.
Twin City State Bank, June 1st, Vol. 109, p. 179.
Commercial Bank of Wooster.

76 Incorporated in 1905.

Alexandria Banking Company of Alexandria.

Banks Incorporated under "An Act to Incorporate Savings Societies," Passed April 16th, 1867.

1. Cincinnati Saving Society of Hamilton County, April 30, 1867.
2. Portsmouth Savings Society. July 31, 1869.
3. Miami Valley Saving Society. October 20th, 1868.
4. The Farmers Saving Society of Lima. January 4th, 1869.
5. The Dime Saving Society Marietta. November 22, 1871.
6. Springfield Savings Society of Clarke County, December 13, 1872.

Banks Incorporated under the Act Entitled "An Act to Incorporate Savings & Loan Associations, Passed Feb. 26, 1873.

Incorporated in 1873.

Nevada Deposit Bank, April 9.
Hubbard Savings Bank, June 30th.
Mansfield Saving Bank, May 23.
German Sav. & Bank Co. Cincinnati.
Central Bank of Upper Sandusky, March 3rd.
Tiffin Savings Bank, September 3rd.
Hancock Sav. & Loan Assn. July 5th.
Citizens Savin-s Bank, May 15th.
Dennison S. & L. Assn. November 17th.
Dayton Savings Bank, November 20th.
National Savings Bank of Toledo, April 5th.
Columbus Savings Bank, April 29th.
Citizens Savings Bank, Columbus, May 12th.
Franklin Savings Bank, Columbus, May 17th.

German Bank Company, Cincinnati, May 17th.
Mansfield Banking Company, May 22.
Cleveland Savings Bank, July 11th.
German Savings Bank of Cleveland, July 11th.
Bohemian Sav. Bank Society, August 7th.
Cleveland Bank of Commerce, Aug. 7th.
The Gerard Sav. Bank, August 22nd.
Farmers & Traders Bank, Toledo, August 13th.
The Knox County Savings Bank, August 13th.
The Mansfield Savings Bank, August 13th.
The Lima Bank Company, Oct. 15th.

Incorporated in 1874.

The Monroe Bank, January 28th.
Farmers Bank, Canton, February 21st.
The Dayton Sav. Bank, February 24th.
Farmers & Mechanics Bank, Cadiz, March 13th.
The Deposit Sav. Bank, Leetonia, April 30th.
Fairfield County Bank, August 19th.
Toledo Sav. Bank & Trust Company, June 26th.
The City Bank of Norwalk, September 7th.
The Farmers Sav. Bank, Burg Hill, September 15th.
Farmers Bank of Mt. Sterling.
Belmont Bank, Somerton, October 8th.
Farmers Dep. & Sav. Bank, Bohland, Oct. 16th.
Berea Sav. & Loan Ass'n, October 22nd.

77 Incorporated in 1875.

The North Western Sav. Bank, January 25th.
Berea Savings Bank, January 25th.
Farmers Bank of Wooster, January 25th.
Western German Bank, Cincinnati, February 25th.
Home Sav. Ass'n, Troy, February 22nd.
The American Sav. & Loan Ass'n, Dayton, March 5th.
Hardin Sav. Bank, Kenton, March 27th.
Bank of Madison.
Lockland & Reading Sav. & Loan Ass'n, April 3rd.
Ohio City Bank, Mt. ——, May 6th.
Citizens Sav. Bank of Portsmouth, May 10th.
Cardington Bank Company, June 23rd.
Sandusky Savings Bank, July 10th.
Bank of Middleport, July 12th.
Larkin Bank, Cincinnati, August 6th.
Capital City Bank, August 14th.
Kenton Sav. Bank, September 23rd.
Citizens Sav. Bank, Newark, November 29th.
Defiance Sav. Bank, Defiance, December 24th.

Incorporated in 1876.

Citizens Sav. Bank, Findlay, January 24th.
Farmers Sav. Bank of Leetonia, February 3rd.

Patrons Sav. Bank of Hamilton, March 8th.
Bank of Arcanan, April 13th.
Commercial Bank of Tiffin, May 18th.
Citizens Sav. Bank, Ashland, June 5th.
Bank of Cincinnati, August 31st.
Bellevue Bank of Bellevue, September 2nd.
Deposit Bank Company of Delaware, December 1st.

Incorporated in 1877.

Queen City Bank, January 17th.
Commercial Sav. Bank, January 30th.
The German Savings Bank, February 16th.
Commercial Bank, March 24th.

Incorporated in 1878.

Fairfield County Bank, September 6th.
Citizens Bank of Greenfield, November 14th.

Incorporated in 1879.

The South Cleveland Bank Company, July 7th.

Incorporated in 1881.

Columbus Sav. Bank Co., January 31st.
Monroe Bank, March 17th.
Huron County Banking Co., August 29th.

Incorporated in 1882.

The Fremont Savings Bank Co., March 6th.
The Fremont Banking Co.
The Alliance Bank Co., April 13th.
Ashley Bank Co., July 10th.
Ashley Banking Co., December 30th.
Greenwich Banking Co., November 15th.

78 Incorporated in 1883.

Fidelity Safe Deposit & Trust Co. January 26th.
The Savings & Trust Co., February 16th.
The Home Security Co. February 27th.
The Cleveland Safe Deposit Co., March 12th.
The Scioto Valley Bank, June 13th.
The Berlin Heights Banking Co. June 22nd.
The Newton Loan & Savings Co., August 24th.
The Peoples Banking Co., Clyde, October 17th.
The Manchester Farmers Bank, October 23rd.
The Ohio Loan & Investment Co., December 6th.
The Broadway Savings & Loan Co. " 18th.
The Citizens Bank Co.

Incorporated in 1884.

The Citizens Bank Co. of Napoleon, February 9th.

Incorporated in 1885.

The Greenville Bank Co., July 17th.
The Huron Bank Co., August 10th.

Incorporated in 1886.

The Peoples Banking Co. Jamestown, March 27th.
West Side Bank Co., Cleveland, March 5th.
The Farmers & Merchants Bank Co. July 17th.
The Central Bank of Versailles, August 23rd.
The East End Savings Bank, August 27th.
" Hubbard Savings Bank, October 7th.
" Franklin Savings Bank, November 30th.
Woodland Ave. Savings & Loan Co., Cleveland.

Incorporated in 1887.

The Dayton Loan & Investment Co., January 19th.
Union Safe Deposit & Trust Co., February 3rd.
Savings Bank Co., Chillicothe, February 16th.
Dollar Saving & Trust Co., March 28th.
Central Sav. Bank, Canton, May 7th.
Oak Harbor State Bank, May 9th.
German American Savings Bank Co. May 31st.
Farmers & Merchants Bank Co., June 10th.
Ohio State Savings & Loan Co., October 27th.

Incorporated in 1888.

The Akron Savings Bank, January 24th.
" Union Sav. Bank.
" " " Deposit & Trust Co., March 12th.
Sandusky Sav. Bank Co., March 12th.
Ohio Savings Bank Co., August 13th.
The American Trust Co., June 27th.

Incorporated in 1889.

Oberlin Bank Company, Jan. 18, Oberlin.
Peoples Banking Company, Jan. 18th. N. Baltimore.
Oglesby & Barnitz " Jan. 21st. Middletown.
Defiance Savings Bank Co., Jan. 23rd. Defiance.
Peoples Banking Company, Apr. 25. Wilmington.
Dime Savings Bank Company, June 15. Cleveland.
Forrest City Savings Bank Company, June 17th. Cleveland.
Tiffin Savings Bank Co., Aug. 29th. Tiffin.
Produce Exchange Banking Company, Sept. 9th. Cleveland.

Wright Banking Co. Sept. 18th. Bellevue.
Peoples Savings Bank Company, Sept. 19. Zanesville.
Pearl Street Savings & Loan Co. Oct 7. Cleveland.

79 Incorporated in 1889. Cont.

Findlay Savings Bank Company, Nov. 4th. Findlay.
Dime Savings & Banking Company, Nov. 21. Cleveland.
Dollar Savings Bank. Nov. 22. Bellaire.
Osborn Bank, Dec. 31. Osborn.

Incorporated in 1890.

Metropolitan Bank of Lima, Ohio, Jan. 23rd. Lima.
Home Banking Company, Jan. 24th. St. Marys.
Citizens Banking Company, Feb. 13. Weston.
Delaware Savings Bank, Feb. 20. Delaware.
Commercial Banking Company. Feb. 25. Bowling Green.
Newark Savings Bank Company, Mar. 6. Newark.
Croghan Bank & Savings Co. Mar. 6. Fremont.
Chagrin Falls Banking Company, Mar. 26th. Chagrin Falls.
Union Savings Bank & Trust Company, Apr. 9. Cincinnati.
Wade Park Banking Company, Apr. 17th. Cleveland.
Mechanics' Savings Bank Company, May 5. Cleveland.
Exchange Banking Co. May 6. Weston.
Harbor " " May 14. Harbor.
Deposit " " " 17. Delaware.
Pemberville " " June 28. Pemberville.
Dime Savings Bank Co., July 7. Alliance.
Mechanics Savings Bank Co. July 14. Fostoria.
Union Banking Co. July 21. Marysville.
Arcade Savings Bank Co. Sept. 27. Cleveland.
Peoples " " " Oct. 11. Akron.
Warren " " " " 16. Warren.
Savings Deposit " " Nov. 13. Elyria.
Loraine Street Savings Bank Co. Nov. 14. Cleveland.
Cincinnati Safe Deposit & Trust Co. Dec. 9th. Cincinnati.

Incorporated in 1891.

Lorain Savings & Banking Co., Jan. 7. Lorain.
Bridgeport Dollar Savings & Banking Co. Jan. 7th. Bridgeport.
Tiro Banking Company, Feb. 21st. Tiro.
Peoples Savings Bank Co. Feb. 23rd. Martins Ferry.
German American Bank, Mar. 2nd. Port Clinton.
Merchants Banking, Safe Deposit and Storage Co. Mar. 12. Cleveland.
Citizens Bank, Mar. 14th. Chardon.
Barberton Savings Bank Co., Mar. 30. Barberton.
Marine Bank Co. Apr. 1st. Cleveland.
Peoples Savings Bank Co., May 7th. Canton.
Glenway Loan & Deposit Co. June 2nd. Delhi Township.

Kinsman Banking Company, June 10. Kinsman.
Farmers & Mechanics Bank, June 19. Marion.
Wick Banking & Trust Company, July 30. Cleveland.
Marion County Bank, Aug. 14. Marion.
Merchants & Clerks Savings Bank Co., Sept. 5. Toledo.
Somerset Bank, Sept. 12. Somerset.
Norwalk Savings Bank Company, Oct. 9. Norwalk.
The East Side Banking Company, Nov. 24. Toledo.
The North Side Bank, Nov. 25. Cincinnati.
" State Savings Bank & Trust Co., Dec. 8. Columbus.
" Farmers Bank, Dec. 29. Marysville.

Incorporated in 1892.

Gunchel Banking Co., Jan. 7th. Middletown.
East Side Bank Co. Jan 12. Toledo.
Sandusky Safe Deposit Co., Feb. 11. Sandusky.
City Savings Bank Company, Mar. 3. Alliance.
Citizens Savings Bank " Mar. 7. Perrysburg.
Dollar Savings Bank " Apr. 18. Painesville.
Garfield " " " May 16. East Cleveland.
Union Banking Company, May 17. New Holland.

80 Incorporated in 1892. Cont.

Savings Deposit Bank Company, May 26. Medina.
Wakeman Bank Co. June 3. Wakeman.
Ashtabula Bank Company, June 14th. Ashtabula.
Citizens Bank Co., June 29. McConnelsville.
Bank of Corning Co. Sept. 29. Corning.
Bank of Minerva " Sept. 30. Minerva.
East End Savings Bank Co. Oct. 1. Columbus.
Central Savings Bank " Oct. 6. Portsmouth.
Bank of Mansfield, Oct. 7. Mansfield.
Home Savings Bank Co. Nov. 10. Toledo.
Spitzer Banking Co. Dec. 19. Toledo.

Incorporated in 1893.

Security Safe Deposit & Trust Co., Jan. 10. Toledo.
Citizens Savings Bank, Feb. 3. Lorain.
West Cleveland Banking Co., Feb. 11. West Cleveland.
Lorain Savings & Banking Company, Feb. 25. Lorain.
Fahey Banking Company, Mar. 7. Marion.
Home Safe Deposit & Trust Co. Apr. 7. Toledo.
City Hall Bank, Apr. 25. Cincinnati.
Montpelier Banking & State Savings Co. May 13. Montpelier.
Security Safe Deposit & Trust Co., June 9. Cleveland.
Ada Savings Bank Co. Sept. 22. Ada.
North Amherst Savings Bank Co., Oct. 10. North Amherst.
Commercial Banking Co. Nov. 9. Coshocton.
Ohio Safe Deposit & Trust Co., Dec. 12. Dayton.

Incorporated in 1894.

Franklin Bank Company, Jan. 9. Newark.
Fifth Avenue Savings Bank Co., Jan. 15. Columbus.
Home Savings Bank Co. May 21. Wellington.
Guardian Trust Company. May 28. Cleveland.
Perry County Bank Company, Sept. 20. New Lexington.
Cleveland Trust Company, Sept. 20. Cleveland.
Gibsonburg Banking Company, Oct. 11. Gibsonburg.
Cuyahoga Savings & Banking Co., Nov. 9. Cleveland.
Citizens Bank, Nov. 15. Cardington.
J. P. Cummings' Co. (Dec. 11.) Nov. 21. Carrollton.
Home Banking Co. Dec. 11. Deshler.

Incorporated in 1895.

Dime Savings Bank Company. Jan. 24. Canton.
Penfield Avenue Savings Bank Company. Feb. 13. Lorain.
Detroit Street Savings & Loan Company, Mar. 27. Cleveland.
H. A. Thompson Banking Company, Apr. 17. Salineville.
Bank of Westerville Company, Apr. 18. Westerville.
Dollar Savings Bank Company, Apr. 18. St. Clairsville.
Massillon Savings & Banking Company, May. 20. Massillon.
Lorain County Banking Company, Sept. 26. Elyria.
Central Market Bank Company, Oct. 24. Columbus.
Market Exchange Bank Company, Nov. 13. Columbus.
Farmers Banking Company, Nov. 30. Paulding.
Peoples Savings & Trust Company, Nov. 30. Youngstown.

81 Incorporated in 1896.

Hardy Banking Company. January 29th. N. Baltimore.
Cleveland Savings & Banking Company, Feb. 18. Cleveland.
Geneva Savings Bank Co., May 23. Geneva.
Dime Savings Bank Company, Aug. 4th. Akron.
Ohio Trust Company, Nov. 7. Toledo.
Ohio Savings Bank Company, Nov. 7. Toledo.
Magruder Bank Company, Dec. 5. Port Clinton.
Orwell Banking Company, Dec. 7. Orwell.
Paulding Deposit Banking Company, Dec. 12. Paulding.

Incorporated in 1897.

Citizens Banking Company, Jan. 9th. Celina.
Central Savings Bank Company, Feb. 27. Akron.
Central Ohio Banking Company, Apr. 2. Columbus.
Peoples Safe Deposit & Savings Bank Co., Apr. 5. Cleveland.
Hamilton Dime Savings Bank Co., Apr. 9. Hamilton.
Seneca Banking Company, Apr. 15. Fostoria.
Citizens Savings Bank Co., July 24. Pemberville.
Bank of Berea Company, Sept. 11. Berea.

Farmers & Merchants Banking Co., Oct. 4. Cleveland.
City Banking Company, Nov. 8. Findlay.
Hamilton County Savings & Loan Co., Nov. 24. Cincinnati.

Incorporated in 1898.

American Trust Company, Jan. 8. Cleveland.
Hough Ave. Savings & Banking Co., Feb. 9. Cleveland.
Commercial Banking Company, Feb. 19. Martins Ferry.
Central Ohio Trust Company, Feb. 23. Columbus.
Central Ohio Savings Bank Co., Feb. 23. Columbus.
Citizens Savings Bank Company, Feb. 28. Warren.
Richland Savings Bank Co., Apr. 8. Mansfield.
Citizens Trust Company, May 20. Sandusky.
Citizens Banking Company, May 20. Sandusky.
Security Trust Company, June 14. Toledo.
Auburndale Savings Bank Company, Aug. 3. Toledo
City Deposit Bank Company, Aug. 9. Columbus.
Security Loan & Investment Company, Sept. 1. Columbus.
Antwerp Exchange Bank Company, Sept. 30. Antwerp.
Brighton German Bank Company. Nov. 12. Cincinnati.
Gambier Savings Bank Co., Nov. 28. Gambier.
Beach City Banking Company. Dec. 1. Beach City.

Incorporated in 1899.

Merchants Banking Company, Jan. 13. Manchester.
Commercial Savings Bank Co., Jan. 27. Toledo.
South Lorain Savings Company, Mar. 2. Lorain.
State Banking & Trust Company, Mar. 11. Cleveland.
Pioneer Trust Co., Mar. 22. Painsville.
Dollar Savings Bank Company, Mar. 24. Flushing.
Union Central Savings Bank Co., Apr. 15. Toledo.
Commercial Banking Company, Apr. 20. Montpelier.
Euclid Banking Company. May 22. Euclid.
Union Trust & Savings Bank Company, May 24. Bryan.
Citizens Savings Bank Company. June 3. Cambridge.
London Exchange Bank Company, June 20. London.
Richland County Bank Company, July 1. Butler.
Home Savings & Banking Company, July 17. Chicago.

82 Incorporated in 1899. Cont.

Walnut Hills Saving Bank Company, July 28. Cincinnati.
Farmers & Merchants Banking Co. Sept. 11. Minerva.
Peoples Savings & Banking Co. Nov. 18. Youngstown.
Cygnet Savings Bank Company, Dec. 4. Cygnet.
National Trust Company, Dec. 5. Cleveland.
Peoples Savings Bank Company, Dec. 11. Painesville.
Unity Banking & Savings Co., Dec. 16. Cincinnati.

Incorporated in 1900.

Farmers & Citizens Bank Co., Jan. 29. Payne.
City Banking Co., Jan. 29. Kent.
Bank of Commerce Company, Jan. 31. Columbus.
Farmers & Merchants Bank Company, Mar. 8. Arlington.
Fort Recovery Savings Bank Co., Apr. 3. Fort Recovery.
Newton Falls Banking Co., Apr. 9. Newton Falls.
Guarantee Deposit Co., Apr. 11. Cincinnati.
Provident Loan Co., Apr. 20. Cincinnati.
Akron Trust Co., Apr. 26. Akron.
Broadway Savings Bank Co., May 3. Toledo.
Guardian Trust & Safe Deposit Co., May 17. Zanesville.
Rocky River Savings & Banking Co., May 17. Rocky River Hamlet.
Cincinnati Trust Co., May 22. Cincinnati.
Bank of Wellston, June 1. Wellston.
Dime Savings Bank Co., June 9. Akron.
Genesee Savings & Banking Co., June 16. Cleveland.
Ashtabula Savings Bank Co., June 21. Ashtabula.
Wood County Savings Bank Co., July 9. Bowling Green.
Dime Savings Bank & Loan Co., July 19. Toledo.
West Side Dime Savings Bank Co., July 21. Columbus.
Farmers & Mechanics Savings Bank Co., July 31. Roseville.
Union Bank & Savings Co., Aug. 22. Cleveland.
Windemere Savings & Banking Co., Aug. 21. East Cleveland.
Grand Rapids Banking Co., Aug. 30. Grand Rapids.
Sylvania Savings Bank Co., Sept. 7. Sylvania.
Kilbuck Savings Bank Co., Sept. 27. Killbuck.
Bradner Savings Bank Co., Nov. 2. Bradner.
Rossford Savings Bank Co., Nov. 2. Rossford.
Provident Savings Bank Co., Nov. 10. Cincinnati.
Provident Trust Co., Nov. 10. Cincinnati.
Perry Savings Bank Co., Nov. 31. Cleveland.
Commercial Savings Bank & Trust Co., Nov. 16. Findlay.
Ohio Trust Co., Nov. 20. Columbus.
Federal Trust Co., Nov. 27. Cleveland.
Savings & Loan Banking Co., Dec. 3. New London.
Franklin County Savings Bank Co., Dec. 5. Columbus.
Conneaut Banking & Savings Co., Dec. 11. Conneaut.
Commercial Bank Co., Dec. 20. Celina.
Peoples Trust Co., Dec. 22. Cleveland.

Incorporated in 1901.

Farmers & Merchants Bank Co., Jan. 2. Sylvania.
Knights of Honor of the World Savings Bank Co., Jan. 2. Cincinnati.
Columbus Savings & Trust Co., Jan. 5. Columbus.
Clark Avenue Savings Bank Co., Jan. 7. Cleveland.
Ohio Valley Bank Co., Jan. 9. Gallipolis.

Elyria Savings & Banking Co., Feb. 6. Elyria.
Collinwood Savings Bank Co. Feb. 11. Collinwood.
Security Savings Bank Co., Feb. 18. Akron.
Dollar Savings & Banking Co., Feb. 27. Cleveland.
Marion Savings Bank Co., Mar. 4. Marion.
Household Loan & Savings Co., Feb. 27. Toledo.
Middlefield Banking Co., Mar. 15. Middlefield.

83 Incorporated in 1901. Cont.

Farmers & Merchants Deposit Co., Apr. 2. Swanton.
Commercial Bank Co., Mar. 20. Cambridge.
Lucas County Savings Bank Co., Mar. 25; Toledo.
Commercial & Savings Bank Co., Mar. 25. Bellefontaine.
Prudential Trust Co., Mar. 27. Cleveland.
Prudential Savings Co., Mar. 27. Cleveland.
Grafton Banking Co., Apr. 2. Grafton.
Lakewood Savings & Banking Co., Apr. 15. Lakewood.
Central Ohio Loan & Trust Co., Apr. 16. Owen P. O.
Nottingham Savings & Banking Co., Apr. 23. Nottingham.
Shilo Savings Bank Co., May 2. Shiloh.
Bank of Cleveland Company, May 4. Cleveland.
Farmers & Merchants Bank Co., May 8. Bellaire.
State Savings Bank Co., May 8. Toledo.
Caxton Savings & Banking Co., May 3. Cleveland.
Central Trust Co., May 15. Cleveland.
Thornville Banking Co., May 20. Thornville.
Dollar Savings Bank Co., May 21. Akron.
Bank of Galena Company, Dec. 6. Galena.
Lima Savings Bank & Trust Co., Dec. 17. Lima.

Incorporated in 1902.

Home Savings & Banking Co., Jan. 3. South Brooklyn.
Peoples Bank Company, Jan. 27. Carey.
German Savings Bank Co., Jan. 27. Martins Ferry.
Peoples Banking & Trust Co., Feb. 4. Marietta.
Citizens Banking Co., Feb. 10. Norwalk.
Exchange Bank Co., Feb. 21. Grover Hill.
Grafton Savings Bank Co., Feb. 28. Grafton.
Payne State & Savings Bank Co., Mar. 18. Payne.
Farmers Bank & Savings Co., Mar. 20. Roandhead.
Shawnee Commercial & Savings Bank Co., Mar. 22. Shawnee.
Private Savings Bank Co., May 24. Toledo.
State Bank of Defiance County, May 28. Defiance.
Dollar Savings Bank Co., May 31. East Liverpool.
Rudoph Savings Bank Co., Apr. 15. Rudolph.
Citizens Banking Co., May 9. Salineville.
Provident Savings Bank & Trust Co., May 29. Cincinnati.
Commercial Bank & Savings Co., June 3. Bluffton.
Mechanics Savings Bank Co., June 13. Toledo.
Farmers & Merchants Bank Co., July 11. Metamora.

Orangeville Savings Bank Co., July 30. Orangeville.
Canton Savings & Trust Co., Aug. 7. Canton.
Helvetia Savings & Banking Co., Aug. 8. Cincinnati.
Genoa Banking Co., Aug. 13. Genoa.
South Side Savings Bank Co., (Sept. 16,) Aug. 30. Columbus.
American Savings Bank Co., Sept. 16. Toledo.
Steubenville Trust Co., Sept. 18. Steubenville.
Steubenville Savings Co. " " Steubenville.
Glenville Banking & Trust Co., Oct. 18. Glenville.
Fostoria Commercial Bank & Savings Co., Oct. 23. Fostoria.
Farmers Banking Co., Oct. 30. Greenwich.
West Lafayette Bank Co., Nov. 4. West Lafayette.
Jefferson Banking Co., Dec. 15. Jefferson.

Incorporated in 1903.

Farmers & Mechanics Trust Co., Jan. 6. Steubenville.
Mercantile Safe Deposit & Trust Co., Jan. 6. Toledo.
Lima Trust Co., Jan. 12. Lima.
Citizens Banking Co., Jan. 29. Beaver.
" Savings Bank & Trust Co., Jan. 29. Salem.
American Savings Bank Co., Jan. 29. Cleveland.
Security Savings Bank & Trust Co., Feb. 2. Portsmouth.

84 Incorporated in 1903. Cont.

Central Trust Company, Feb. 2. Cleveland.
Farmers Banking Company, Feb. 24. Rockford.
North Bloomfield Banking Co., Feb. 25. North Bloomfield.
Home Savings Bank Co., Mar. 13. Cincinnati.
Ohio State Bank Co., Mar. 16. Liberty Center.
Merchants & Farmers Bank Co., Mar. 17. Hilliards.
Hamden Savings Bank Co., Mar. 20. Hamden Junction.
Cosmopolitan Bank & Savings Co., Mar. 24. Cincinnati.
Ostrander Banking Co., Mar. 24. Ostrander.
South Western Ohio Trust Co., Apr. 9. Dayton.
Farmers & Merchants Bank Co., Apr. 20. Grove City.
Grove City Savings Bank Co., Apr. 21. Grove City.
Southern Ohio Savings Bank Co., Apr. 21. Cincinnati.
Security Loan & Trust Co., Apr. 22. Newark.
Dayton Savings & Trust Co., Apr. 28. Dayton.
Ridgeway Banking Co., May 1. Ridgeway.
Citizens Banking & Trust Co., May 2. Coshocton.
Peoples Banking & Trust Co., May. 11. Coshocton.
Martin Bank Co., May 25. New Straitsville.
Reserve Trust Co., June 9. Cleveland.
St. Marys Banking & Trust Co., June 11. St. Marys.
Carrollton Savings & Banking Co., June 26. Carrollton.
State Savings Bank Co., July 2. Canal Dover.
Hardin County Bank Co., July 12. Forest.
Ohio Trust Co., July 24. Norwalk.
Amanda Bank Co., July 27. Amanda.

Lincoln Savings & *Savings* Co., July 30. Cleveland.
Proctorville Bank Co., Aug. 17. Proctorville.
Reeves Banking & Trust Co., Aug. 11. Dover.
Peoples Savings Bank Co., Sept. 22, Byesville.
Euclid Avenue Trust Co., Sept. 30. Cleveland.
Jefferson County Bank Co., (Se) Oct. 16. Mingo.
First Savings & Banking Co., Oct. 15. Dayton.
Clinton Savings Bank Co., Oct. 23. Clinton.
Ottoville Bank Co., Oct. 24. Ottoville.
Citizens Banking Co., Nov. 13. Berlin Heights.
Peoples Bank Co., Dec. 1. Canal Winchester.
Applecreek Banking Co., Dec. 1. Apple Creek.
Market Savings Bank Co., Dec. 3. Toledo.
Farmers & Merchants Bank Co., Dec. 5. Amanda.
Farmers Banking Company, Dec. 16. Lake View.
Commercial Bank Co., Dec. 26. Macksburg.
Norwood Savings Bank & Trust Co., Dec. 30. Norwood.
Security Savings Bank & Safe Deposit Co., Dec. 31. Cincinnati.

Incorporated in 1904.

Citizens Banking Co., Jan. 7. Waynesfield.
State Savings Bank Co., Jan. 16. Oberlin.
Bolivar State Bank Co., Jan. 20. Bolivar.
Peoples Savings Bank Co., Jan. 26. Mt. Gilead.
Farmers & Merchants Bank Co., Feb. 11. Millersburg.
Defiance City Bank Co., Mar. 4. Defiance.
Peoples Bank Co., Mar. 8. Pataskala.
North Fairfield Savings Bank Co., Mar. 9. North Fairfield.
Groveport Bank Co., Mar. 15. Groveport.
North Side Savings Bank Co., Mar. 21. Columbus.
Savings Bank Co., Mar. 26. Warren.
Scott Bank Co., Mar. 27. Scott.
Colonial Savings Bank & Trust Co., Apr. 19. Fremont.
Bank of Port Washington Co., Apr. 27. Port Washington.
Ohio Savings Bank Co., Apr. 27. Akron.
Reynoldsburg Bank Co., Apr. 28. Reynoldsburg.

85 Incorporated in 1904. Cont.

North Lawrence Banking Co., May 13. North Lawrence.
Smithville Banking Co., May 13. Smithville.
Farmers & Citizens Savings Bank Co., May 24. Germantown.
Citizens Bank Co., May 26. Ansonia.
Peoples Savings Bank Co., June 2. Greenfield.
Kipton Bank Co., July 2. Kipton.
Sun Savings Bank Co., July 22. Rising Sun.
Frazeysburg Savings & Loan Co., July 27. Frazeysburg.
Cuyahoga Falls Savings Bank Co., July 28. Cuyahoga Falls.
Farmers Bank & Trust Co., Aug. 8. Pomeroy.
Farmers Savings Bank Co., Aug. 26. Ashley.
Youngstown Savings & Banking Co., Sept. 6. Youngstown.

Cambridge Savings Bank Co., Sept. 23. Cambridge.
Capitol Savings & Trust Co., Oct. 5. Columbus.
American Banking Company, Oct. 5. Sandusky.
Putnam County Banking Co., Oct. 19. Ottawa.
Produce Exchange Bank. Co., Nov. 10. Columbus.
Dollar Savings Bank Co., Nov. 14. Monroeville.
Bank of Ottawa Company, Nov. 14.
Farmers & Citizens Banking Co., Nov. 14.
Peoples Bank Co., Nov. 21.
Citizens State Banking Co., Nov. 22.
Bank of Corning Co., Nov. 23.
Farmers Banking Co., Nov. 28.
Peoples Savings Bank Co., Dec. 6.
Willoughby Banking Co., Dec. 12.
Lorain Savings & Trust Co., Dec. 20.

86 Incorporated in 1905.

Oakwood Deposit Bank Co., Jan. 4,
Security Trust and Savings Bank, Jan. 12,
Stock Yards Bank and Trust, Jan. 14,
Stock Yards Bank and Trust Co., Jan. 17,
Peoples' Banking Co., Jan. 17,
Lincoln Savings Bank Co., Jan. 24.
Mt. Vernon Avenue Bank Co., Jan. 24.
Queen City Savings and Trust Co., Jan. 25,
Superior Savings and Trust Co., Jan. 27,
Citizens' Savings Bank Co., Jan. 30,
Citizens' Savings Bank Co., Jan. 31.
Doylestown Banking Co., Feb. 6
Citizens Savings and Loan Co., Feb. 8.
Morral Banking Co., Feb. 14;
Ganbier Banking Co., Feb. 18
Commercial Savings Bank Co., Feb. 28,
Commercial Savings and Trust Co., Mar. 27,
First Mortgage Banking Co., Mar. 28,
Ashland Bank and Savings Co., Mar. 31,
Harrisburg Savings and Banking Co., Apr. 4,
Commercial Bank Co., Apr. 12
State Savings Bank Co., Apr. 24,
Security Savings Bank Co., April 26,
Home Banking Co., May 4.
American Savings Bank Co., May 27,
Bettsville Banking Co., June 1.
Chardon Savings Bank Co., June 2,
American Safe Deposit and Trust Co., June 6,
Dollar Savings Bank Co., June 14,
Northern Savings Bank Co., June 14
Commercial Bank Co., June 26,
College Corner Banking Co., July 3,
Citizens' Savings and Trust Co., July 3,
Worthington Savings Bank Co., July 25,

Iron City Savings and Banking Co., July 29,
Conneaut Banking and Trust Co., Aug. 14
Winchester Bank Co., Sept. 1,
Kirkersville Saving Bank Co., Sept. 11,
Castalia Banking Co., Sept. 14,
Co-Operative Trust Co., Oct. 2
Utica Savings Bank Co., Sept. 28
Lorain Banking Co., Oct. 4,
Minerva Savings and Trust Co., Oct. 23,
Farmers' and Merchants' Bank Co., Nov. 10,
Peoples' Bank Co., Nov. 20,

Incorporated in 1906.

Walnut Hill Savings and Banking Co., Jan. 12,
Security Savings Bank and Trust Co., Jan. 15,
Security Savings and Trust Co., Jan. 16,
Licking County Bank and Trust Co., Jan. 18,
Farmers' and Traders' Banking Co., Feb. 1,
Centersburg Savings Bank Co., Feb. 3,
Bremen Bank Co., Feb. 8,
State Savings Co., Feb. 9,
Peoples' Bank and Savings Co., Feb. 13,
Farmers' and Merchants' Banking Co., Feb. 14,
Farmers' Savings and Trust Co., Feb. 17,
State Savings Bank Co., Feb. 24,
Peoples' Banking Co., Mar. 2,
Columbiana Bank and Savings Co., Mar. 3.
Lowellville Savings and Banking Co., Mar. 8,
South Akron Banking Co., Mar. 19,
Peoples' Bank Co., Mar. 19,
Commercial and Savings Bank Co., Mar. 27.

87 Incorporated in 1906, Cont.

Amherst German Bank Co., Apr. 5,
Peoples' Savings and Banking Co., Apr. 10
Farmers' State and Savings Bank Co., Apr. 11,
Guaranty Savings and Trust Co., Apr. 19
Peoples Savings Bank Co., April 23,
Richwood Banking Co., Apr. 25,
Farmers' Savings Bank Co., Apr. 28,
Kensington State Bank Co., May 10,
Commercial and Savings Bank Co., May 16,
Cummings Trust Co., May 18,
Perrysburg Banking Co., May 25,
New Berlin Banking Co., May 25.

88 [Endorsed:] Filed June 22nd, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

Endorsed on cover: File No. 20,411. Ohio supreme court. Term No. 446. Corwin D. Bachtel, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,411.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 447.

CORWIN D. BACHTEL, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 19, 1906.

(20,412.)

(20,412.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 447.

CORWIN D. BACHTEL, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Certificate of clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order suspending judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Petition for writ of *habeas corpus*	1	11
Exhibit A—Warrant	2	12
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Warrant	4	14
B—Indictment	4	15
C—Demurrer	6	16
Order postponing hearing and fixing bail	7	17
Recognizance	8	18
Order dismissing application and remanding petitioner	9	19
Order of supreme court of Ohio suspending judgment	10	20
Bond to suspend judgment	11	20
Mandate from supreme court of Ohio	11	21
Opinion	15	24
Clerk's certificate	25	30

a Supreme Court of Ohio.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10,210, wherein Corwin D. Bachtel was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D., 1906.

Witness my hand and Seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D., 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b Supreme Court of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Assignment of Errors.

Now comes Corwin D. Bachtel, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the

United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States by being arrested and prosecuted under indictments found and returned solely under favor of section 30 of the above recited acts.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel, Plaintiff in Error.

d [Endorsed:] No. 10210. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of errors. Filed Sep. 14 1906 Supreme Court of Ohio, L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Corwin D. Bachtel assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn

in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under indictments found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Corwin D. Bachtel prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906 be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

WELTY & ALBAUGH,
VIRGIL P. KLINE,
WM. A. LYNCH,
Attorneys for Corwin D. Bachtel,
Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of eror allowed; and the said Corwin D. Bachtel having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictments until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st 1906.

g [Endorsed:] No. 10210. Supreme Court of Ohio. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Welty & Albaugh, Virgil P. Kline and Wm. A. Lynch, Attorneys for plaintiff in error.

h CORWIN D. BACHTEL, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Corwin D. Bachtel as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

CORWIN D. BACHTEL.
THE BANKERS' SURETY COMPANY.
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authority of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven thousand Dollars over and above all its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10210. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Corwin D. Bachtel and R. Frank Wilson, sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Corwin D. Bachtel, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of September, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10210. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Corwin D. Bachtel is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

Sept. 21st, 1906.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio.

o [Endorsed:] No. 10210. Supreme Court of United States. Corwin D. Bachtel, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Petition in Error.

Plaintiff in error Corwin D. Bachtel states that in the vacation after the February term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to wit: on May 24th, 1906, the Plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a writ

of *habeas corpus* and on that day applied to the Honorable Thomas T. McCarty, one of the judges of said Circuit for a writ of *habeas corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said writ; that in the vacation after said February term, 1906, to wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application writ and return, that said plaintiff in error the petitioner herein should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the
q plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2 Section # 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of section 1 of the 14th amendment to the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

r 6th. And for other errors apparent on the face of the record.

Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

JAY P. DAWLEY AND
WELTY & ALBAUGH,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16th, 1906.

R. FRANK WILSON,
By CHARLES P. UPHAM AND
JOHN W. CRAINE,
His Att'ys.

s In the Supreme Court of the State of Ohio.

MONDAY, *June* 18, 1906.

10210.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Entry.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark County, O., until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10210.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879

(3821-85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid was unconstitutional and that said statute and indictments were void for the reason, among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio in and for the said
u Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one, article one, section two article one, and section twenty six, article one of the fourteenth amendment of the constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section twenty six, article two of the constitution of the State of Ohio or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking," as amended April 24, 1879, section (3821-85) of the annotated Statutes of Ohio, was not void and invalid as in violation of section one, article one, section two, article one, and section twenty six, article two of the
v constitution of the State of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one, section two, article one and section twenty six, article two of the con-

stitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of the Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to the Circuit Court of Stark County.

June 18. Petition in error, Waiver, and Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment. Bond $7000.00. J. 21.
18. Copy of entry suspending judgment sent Clerk.
29. Judgment affirmed. J. 21.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
Bond in Duplicate filed.
Writ of Error filed.
Citation on Writ, and entry of appearance filed.

x Supreme Court of Ohio.

10210.

CORWIN D. BACHTEL, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the

record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case and upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio, this fourth day of October, A. D. 1906.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*.

1 At a term of the Circuit Court begun and held in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 8th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of Said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said Court then and there held among other things appears the following, to wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 707.

In the Matter of the Application of CORWIN D. BACHTEL for *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 24th day of May in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's Office of said Circuit Court a certain petition in this cause which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of CORWIN D. BACHTEL for a Writ *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by Frank Wilson sheriff of said county at the county

jail of said county. The pretended cause of said imprisonment is a warrant issued by the clerk of the Court of Common Pleas of said county a copy of which is hereto attached marked Exhibit A. The petitioner states that as he is advised the indictment referred to in said warrant was presented under and solely by virtue of a certain statute, to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879; that said statute is unconstitutional and void, and that said court was without juris-
2 diction, power or authority to issue said warrant, and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may he discharged from such unlawful restraint and imprisonment.

CORWIN D. BACHTEL,
By WELTY & ALBAUGH &
WM. A. LYNCH,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

Corwin D. Bachtel, being duly sworn says that he is the petitioner in this proceedings; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

CORWIN D. BACHTEL.

Sworn to by said Corwin D. Bachtel before me and by him signed in my presence this 24th day of May, 1906.

JACOB J. WISE, [SEAL.]

EXHIBIT "A."

Capias.

THE STATE OF OHIO, *Stark County, ss:*

To the Sheriff of said County, Greeting:

We command you, to take Corwin D. Bachtel and him safely keep, so that you have his body before the Judge of the Court of Common Pleas at the Court House in Canton, in said County of Stark, to answer to an indictment for making false entry in report of condition of bank and hereof fail not, and have you then and there this writ.

Witness my hand and the seal of said Court, at Canton, Ohio, this 24th day of May, 1906.

JACOB J. WISE, *Clerk.*

And afterwards on the 24th day of May, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B-454.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came Corwin D. Bachtel and his attorneys

Welty & Albaugh and Wm. A. Lynch and submitted to the undersigned, one of the judges of said court his petition for a writ of *habeas corpus*, which had been filed in the office of the clerk of said court, and said petition being heard it is now here ordered that the clerk of the court shall issue the same to the sheriff of said county commanding him to have the body of said Corwin D. Bachtel before the undersigned at the Court House Court Room No. 3 at 11 o'clock A. M.

3 Done at Canton, May 24, 1906.

THOMAS T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon on this same day there was duly issued from the Clerk's Office of said Court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Corwin D. Bachtel by you imprisoned and restrained of his liberty, as it is said, you have before Thomas T. McCarty, a Judge of our Circuit Court, on the 24" day of May 1906, at 11 o'clock A. M., at Room No. 3 in the Court House in said County, to do and receive what said Judge shall then and there consider concerning him in his behalf; and that with this writ you then and there return the cause of the taking and detention of the said Corwin D. Bachtel; and have you then and there this writ with your service thereon.

Witness my signature and the seal of said Court at Canton, Ohio, this 24" day of May A. D. 1906.

JACOB J. WISE,
Clerk of said Circuit Court. [SEAL.]

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's Office of said Court the foregoing writ of *habeas corpus* issued to said Sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

On May 24th, 1905, I received the writ of *habeas corpus* in this cause and in obedience to the command thereof, having in my custody and under restraint the said Corwin D. Bachtel by virtue of a capias (a copy of which is hereto attached marked "Exhibit A" and made a part of this return) issued by Jacob J. Wise Clerk of the

Court of Common Pleas of Stark County, Ohio, on the finding by the Grand Jury of Stark County, Ohio, at the May Term, 1906, of an indictment (a copy of which is hereto attached marked "Exhibit B." and made a part of this return) against the said Corwin D. Bachtel for making a false entry in a report of the con-
4 dition of The Canton State Bank to the Auditor of State of The State of Ohio under Section 3821-85 of the Revised Statutes of Ohio, and known as the free banking act of 1851. That upon the return of the said Grand Jury finding and presenting said indictment the said Corwin D. Bachtel filed in the Court of Common Pleas of Stark County, Ohio, a demurrer (a copy of which is hereto attached marked "Exhibit C" and made a part hereof) to the same averring the unconstitutionality of said Statute, which demurrer said Court overruled and required said Corwin D. Bachtel to plead to said indictment which he thereupon did, and pleaded "not guilty" and said Court having been requested by the Prosecuting Attorney of Stark County Ohio, to fix a bond for said Bachtel's appearance, from day to day to answer said indictment, fixed the same at one thousand ($1000.00) dollars, which the said Corwin D. Bachtel refused to give and thereupon a capias was issued to me commanding me to arrest said Bachtel and in obedience thereto, I took him into custody and now have him and now have his body before you, being imprisoned as aforesaid by me under said capias.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

EXHIBIT "A."

Capias.

THE STATE OF OHIO, *Stark County, ss:*

To the Sheriff of said County, Greeting:

We command you, to take Corwin D. Bachtel and him safely keep, so that you have his body before the Judge of the Court of Common Pleas at the Court House in Canton, in said County of Stark, to answer to an indictment for making false entry in report of condition of bank and hereof fail not, and have you then and there this writ.

Witness my hand and the seal of said Court, at Canton, Ohio, this 24th day of May 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

EXHIBIT "B."

Indictment for Making False Entry in Report of Condition of Bank.

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid being then and there the cashier of The Canton State Bank a banking Company organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking company was located and engaged in the business of banking in the city of Canton, in said County of Stark and State of Ohio and being in said County of Stark and State of Ohio unlawfully and knowingly did make a false entry in a report of the said banking Company showing its condition at the close of business March 6th, 1905, to W. D. Guilbert, Auditor of the State of Ohio, in compliance with a requisition made March 7th, 1905, by the said W. D. Guilbert, Auditor of the State *of the State* of Ohio, to the cashier of The Canton State Bank, Canton, Ohio, in accordance with the laws of The State of Ohio, with intent then and there to injure and defraud the said, The Canton State Bank, its directors and depositors and to deceive W. D. Guilbert the Auditor of the State of Ohio, and to deceive Austin C. Brant the President of said Banking Company and to deceive William Wagner, William R. Zollinger and William H. Hoover part of the directors of said banking Company which said report is in the words and figures following, to wit:—

DR.			CR.	
Resources.	Dollars.	Cts.	Liabilities.	Dollars. Cts.
1. Loans on real estate,			1. Capital stock paid in	180000.00
2. All other loans and discounts.....	742807.81		2. Surplus.....	19000.00
3. Overdrafts..	4925 98		3. Undivided profits	7988.39
4. United States Bonds on hand			4. State bank notes outstanding	
5. State bonds on hand			5. Dividends unpaid	9 00
6. Other stocks, bonds & mortgages			6. Individual deposits.....	602555.45
7. Due from other banks and bankers..... ..	56270.74		7. Due to banks and bankers	
8. Real estate			8. Notes and bills rediscounted.....	30000.00
			9. Bills payable	

6

9. Furniture and fixtures..		1500.00
10. Current expenses.....		1636.18
11. Premium on bonds,		
12. Cash items.		10784.79
13. Gold coin.....	2320	
Silver coin.....	2913.34	
		5233.34
14. Nation- bank notes &		
15. United States notes. ...		16394.00
Total		839552.84

Total.....	839552.84

STATE OF OHIO, *County of Stark:*

Sworn to and subscribed before me this 9th day of March, 1905.

JOHN T. BLAKE,
Notary Public. [SEAL.]

I, Corwin D. Bachtel, of "The Canton State Bank," do solemnly swear that the above is true to the best of my knowledge and belief.

CORWIN D. BACHTEL,
Cashier.

This bank was incorporated May 17", 1900, under act of 1851, and commenced business May 21" 1900.

C. D. BACHTEL, *Cashier.*

which said false entry so made as aforesaid, by the said Corwin D. Bachtel cashier of the said, The Canton State Bank was as follows: "overdrafts 4925.98" thereby making said report to show that at the close of business of the bank on March 6, 1905, there were only overdrafts to the amount of $4925.98 whereas in truth and in fact and at the time well known to the said Corwin D. Bachtel cashier as aforesaid, the overdrafts in said bank at the close of business on March 6, 1905, were more than Thirty Thousand ($30000.00) dollars, all of which was at the time he made said false entry in said report, well known to the said Corwin D. Bachtel as aforesaid. contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed: "A true bill. Joseph Folk, Foreman of Grand Jury.

EXHIBIT "C."

Demurrer.

This defendant demurs to the said Indictment because the facts stated therein do not constitute an offense punishable by the laws of this State.

JAY P. DAWLEY &
WELTY & ALBAUGH,
Attorneys for Defendant.

Notice.

The State of Ohio will take notice that upon the hearing
7 of this demurrer Corwin D. Bachtel the defendant herein, will show that he was born in the United States and is now a resident of the State of Ohio; that he is subject to the jurisdiction of the United States and a citizen thereof and of the State of Ohio; that by the laws of the State of Ohio no indictment could have been found except under Section 30 of an Act entitled "An Act to authorize Free Banking" passed March 21st, 1851, and amended April 24th, 1879. Defendant says that said Act, and law, should not be enforced against him because it abridges his privileges and immunities as a citizen of the United States. That by its enforcement against him it will deprive him of his liberty and property without due process of law and that said Act denies him the equal protection of the laws. He says that said Act affects but a small number and a very small proportion of the class of persons in the State of Ohio; who are engaged in the employments designated in said Act in the same manner and under the same conditions and circumstances as this defendant, and that said Act is unequal and partial; and that said Act contravenes Article 14, Section 1, of the amendments to the Constitution of the United States and is therefore void. Upon the hearing of said demurrer this defendant will also insist that said Act is void because it contravenes Article 1, Sections 1 and 2, and Article 2, Section 26 of the Constitution of Ohio. Said defendant will further contend that the facts stated in said Indictment do not contain an offense under the laws of Ohio.

JAY P. DAWLEY &
WELTY & ALBAUGH,
Attorneys for Defendant.

Certificate.

STATE OF OHIO, *Stark County, ss:*

In Court of Common Pleas.

I hereby certify that the foregoing is a true copy of the Demurrer and Notice in the above entitled cause filed in the Clerk's Office of said Court on the 22nd day of May A. D. 1906.

Witness my name and seal of said Court this 24th day of May A. D. 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

And thereupon at this same term and date, to wit:—

Journal B, 454.

Be it remembered that on this day, at the Court House at the City of Canton, in said county, Frank Wilson, the sheriff of said
8 county having now appeared with the body of said Corwin D. Bachtel before the undersigned judge of said court in pursu-

ance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Corwin D. Bachtel before the judges of our said Circuit Court, or any two of the-, at the Court House of Morrow County at Mt. Gilead, the county seat of said county on Friday, June 1st 1906, at 9 o'clock A. M. unless the said Corwin D. Bachtel shall enter into a recognizance to the State of Ohio, in due form to appear before said judges at that time and place, and abide any order that may be made by them in the premises, in the sum of seven thousand dollars, with sureties to our acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, at the Court House Court Room No. 3 May 24, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon at this same term and date, to wit:

Journal B, 455.

Be it remembered that on May 24", 1906 Corwin D. Bachtel, J. H. Bachtel, A. T. Stone, D. S. Sommer, Helen M. Bachtel & John Skeeles his sureties personally appeared before the undersigned, Hon. Thomas T. McCarty, one of the Judges of said Court and jointly and severally acknowledge themselves to owe to the State of Ohio the sum of Seven Thousand Dollars ($7000.00) to be levied of their respective goods and chattels, lands and tenements if default be made in the condition following, to wit: The condition of this Recognizance is such that if the above bound Corwin D. Bachtel shall personally be and appear before the Judges of said Circuit Court or any two of them at the Court House of the County of Morrow, State of Ohio, at Mt. Gilead, in said County on Friday, June 1", 1906 at 9 o'clock A. M. and shall abide the order or judgment of said Judges or any two of them and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

9

CORWIN D. BACHTEL.
J. H. BACHTEL.
A. T. STONE.
D. S. SOMMER.
HELEN M. BACHTEL.
JOHN SKEELES.

Taken and acknowledged in open Court on the day and year first above written.

THOMAS T. McCARTY,
Judge of said Circuit Court.

And afterwards on the 8th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:

Journal B, 455.

This cause came on to be heard at chambers after the February Term, 1906, to wit, on June 8th, 1906, before M. H. Donahue, Frank Taggart and T. T. McCarty the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant Corwin D. Bachtel for a Writ of *Habeas Corpus* and upon the Return and exhibits attached thereto of R. Frank Wilson as Sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of Counsel, the Court find that the said Corwin D. Bachtel was at the time of the filing of said application in the custody of R. Frank Wilson as the Sheriff of Stark County, Ohio, under a capias or order of arrest issued therein and by the Common Pleas Court of said County and which capias or order of arrest was issued by said Court under and by virtue of an indictment found and returned by the Grand Jury of said County against the said Corwin D. Bachtel charging him with having committed the offense set forth in said indictment under Section 30 of an Act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st, 1851, and as the same was amended on April 24th, 1879 and now known as Section (3821-85) of the annotated statutes of Ohio. (And the Court find that said Section 30 of said Act is not in contravention of Article 1, sections 1 and 2 and Article 2, Section 26 of the Constitution of Ohio and that it is not in contravention of the fourteenth amendment of the Constitution of the United States as alleged by the said Corwin D. Bachtel in his said Application) and the Court further find that said Corwin D. Bachtel is not and was not at the time of the filing of said application, unlawfully detained by the respondent R. Frank Wilson as Sheriff of said Stark County, Ohio, and that the application of the said Corwin D. Bachtel for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by the said Judges that the application of the said Corwin D. Bachtel for said Writ of *Habeas Corpus* be dismissed and that the said Corwin D. Bachtel be remanded to the custody of the said R. Frank Wilson, respondent and sheriff of Stark County, Ohio, and by virtue of said capias and order of arrest and indictment. It is further considered that the said Corwin D. Bachtel pay the costs of this proceeding taxed at $— and for which execution is awarded against him, and to all of the findings, orders and judgment aforesaid, the said Corwin D. Bachtel then and there excepts.

Mandate from Supreme Court Filed.

And afterwards on the 11th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following, to-wit:

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State Ohio of the Term of January, A. D. 1906.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff of Stark County.

Entry.

Upon motion of plaintiff in error and for good cause shown, it is hereby ordered by this Court that the execution of the judgment herein be suspended, upon plaintiff in error give an undertaking in the sum of seven thousand dollars, subject to the approval of the Clerk of Courts of Stark County, until the final determination of this action in this court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the records of said court, to wit: from Journal No. 21, Page —.

In witness whereof, I have hereunto subscribed my name
11 and affixed the Seal of said Supreme Court, this 9th day of June A. D. 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

Bond Filed.

And thereupon on this same day there was duly filed in the Clerk's Office of said court a certain bond in this cause, which bond reads and is in the words and figures following to wit:—

Recognizance for Suspension of Execution of Sentence.

THE STATE OF OHIO
vs.
CORWIN D. BACHTEL.

In Supreme Court of Ohio.

No. 10166.

"Error."

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, that on the eleventh day of June A. D. 1906, Corwin D. Bachtel and D. S. Sommer, G. P. Craig, A. T. Stone, J. H. Bachtel, Helen M. Bachtel and John Skeeles his sureties per-

sonally appeared before Jacob J. Wise, Clerk of Courts in and for the County of Stark aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following to-wit:—The condition of this recognizance is such, that if the above bound Corwin D. Bachtel shall personally be and appear before the Supreme Court of Ohio un[illegible] the above case in error of said Corwin D. Bachtel is determined, and abide the judgment or sentence of the Court, and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

CORWIN D. BACHTEL.
D. S. SOMMER.
G. P. CRAIG.
A. T. STONE.
J. H. BACHTEL.
HELEN M. BACHTEL.
JOHN SKEELES.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk,*
By A. W. AGLER, *Deputy.*

Mandate from Supreme Court Filed.

And afterwards on the 2nd day of July A. D. 1906, there was duly filed in the Clerk's office of said court a certain Mandate from Supreme Court in this cause, which Mandate reads and is in the words and figures following to-wit:—

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

CORWIN D. BACHTEL
vs.
FRANK WILSON, Sheriff.

12 Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit:—section thirty of an act

of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821–85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictment was or could be found, returned or prosecuted; that upon the return of said indictment to said Court of Common Pleas the plaintiff in error demurred to said indictment upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictment were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictment, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges, of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictment, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictment were void because they were repugnant to section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the
13 Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictment were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictment were not repugnant to said section one article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment of the Constitution of the United States, or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851 entitled "an act to authorize free banking as amended April 24, 1879, section (3821–85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one Article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and valid for the reasons so, as aforesaid assigned. On consideration whereof,

it is decided and adjudged that said statute and indictment are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment to the Constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for
14 this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended, taxed at $—. Ordered that a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the Seal of said Court, this twenty-fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing Judgment of our Supreme Court of Ohio, in the case of Corwin D. Bachtel *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Lawson E. Emerson, Clerk of our said Supreme Court of Ohio, at Columbus, this 24th day of July, 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*.

15 *Opinion of the Circuit Court in Cause No.* 707.

THE STATE OF OHIO, *Stark County, ss:*

In Circuit Court, at Chambers, before Judges Donahue, McCarty, and Taggert.

In the Matter of the Application of CORWIN D. BACHTEL for a Writ of *Habeas Corpus.*

The petitioner, Corwin D. Bachtel, in his petition in *habeas corpus* presented to the judges of this court, claims that he is unlawfully restrained of his liberty by the sheriff of Stark County, Ohio, and prays an order discharging him from such imprisonment.

It appears by the sheriff's return that the petitioner was indicted by a grand jury of Stark County for a violation of Section- 3821-85 of the Revised Statutes of Ohio, and in default of bail was committed to the jail of said county until trial could be had upon said indictment.

The petitioner claims that the indictment is invalid and that the Court of Common Pleas of Stark County has no jurisdiction thereof for the reason that the section under favor of which the State is attempting to prosecute the petitioner is unconstitutional and void, because it is in violation of Sections one and two of Article one of the Bill of Rights, and of Section 26, Article 2 of the Constitution of Ohio, and of Section 1 of the Fourteenth Amendment to the constitution of the United States.

It is contended by the State that this Court ought not to entertain this petition in a *habeas corpus* at this time for the reason that it appears by the return of the sheriff that the prisoner is in the custody of the Common Pleas Court of Stark County, in which
16 said original prosecution is pending; that he has already filed a demurrer to said indictment raising the constitutionality of said section; upon which that court has held adversely to his claim, and that he ought to be required to follow in the regular course and prosecute error to this court when it should appear, the holding of the Common Pleas Court upon that demurrer was prejudicial to the rights of the petitioner. With this contention in the abstract, we are in entire accord. We think that this is the better practice, and one that ought to be insisted upon by all review in courts, for it is not the purpose of *habeas corpus* to bring before a reviewing court errors of the trial court. There is another plain and adequate remedy at law provided for that purpose, but when a petitioner files his petition in *habeas corpus*, averring that he is unlawfully restrained of his liberty, and attacks the jurisdiction of the court issuing the warrant of order for his commitment, we think — is the policy of our law that the question of jurisdiction may be heard, and perhaps ought to be heard, but all questions of mere error or irregularity will not be heard upon such petition, but solely and alone the jurisdiction of the court issuing the writ or order of commitment.

In determining the question raised, then upon this petition in *habeas corpus,* to-wit, the constitutionality of the act under which prosecution is brought, it is necessary to determine whether or not the language of the law itself raises any doubt as to its constitutionality. The three objections urged to the constitutionality of this act are kindred in their nature, and many of the reasons urged by the petitioner why it is in violation of Section 26 of Article 2 of the Constitution of Ohio, are practically the same reasons urged by him as to why it is in violation of Sections 1 and 2 of Article 1 of the Bill of Rights, and also Section 1 of the Fourteenth Amendment of the Constitution of the United States. In fact, the questions raised here by counsel for the petitioner are comprised in the contention that the law is not of uniform operation throughout the State, and for that reason violates all of these constitutional provisions.

17 Turning first to the law itself we find the comprehensive language used:—"Every president, director, cashier, teller, clerk or agent of any banking company *tec.* who shall etc." It is insisted by petitioner that this language does not include many other individuals similarly situated in their business relations to the public, because the words "any banking company" can only refer to banks organized under what is known as the Free Banking act of this state passed in 1851, and that such officers of all other banks are not amenable to this law notwithstanding their occupations and duties are identical with the occupation and duties of the officers of such banks, and that by reason thereof, the law is not uniform in its operation. The presumption, of course, is that this law is constitutional, and it must clearly appear that it is not, before a court is authorized to declare it unconstitutional.

In the case of Slingluff, *et al., v.* Weaver, *et al.,* 66 O. St., 621, the Supreme Court says: "But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact? That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

If that doctrine is to be applied to the question here presented, it is an end to this contention, for taking this section alone, without reference to its position in the chapter in which it is found, and without reference to its history, it does clearly appear that it comprises all banking companies in the State of Ohio, and, therefore, the objections urged by the petitioner do not obtain.

But upon the theory that every section of the law must be construed *in pari materia* with other sections applying to the

18 same subject matter, then it might fairly be said in contemplation of the whole chapter that there is a doubt appearing as — whether it includes all banking companies or simply all banking companies organized under the free banking act, and, therefore it may become the duty of the court to investigate the history of

this legislation for the purpose of determining, first, to what character of banks this act itself does apply.

Coming, then, to these considerations, we find that on the 24th day of April, 1879, there was in force and effect what was then known as the free banking act, passed March 21, 1851, Section 30 of which was substantially in the language of Section- 3821-85 of the Revised Statutes of Ohio, except as to the omission in the latter act of various provisions of that section relating to putting in circulation notes and circulating bills of such banks provided for in that act, and upon said day the legislature of Ohio passed an act entitled "An Act Further to Amend the Act entitled "An Act to authorize free banking, passed March 21, 1851, (49 Ohio Laws, 41,) and the act amendatory and supplementary thereto." And section 6 of this amendatory act is an amendment of Section 30 of the original act, and such amendment is now Section- 3821-85 of the Revised Statutes of Ohio. Counsel, however, insist that these sections relating to the free banking act never became a part of the Revised Statutes of Ohio, but to use that term for convenience at this time, and for the further purpose of designating where they can conveniently be found, and not intending to determine whether they are a part of the Revised Statutes or not. They are at least part and parcel of the statute law of Ohio, and as such we are now dealing with them.

Now, as determining whether the phrase in the amended Section 30, "any banking company," applies to all banking companies of the state, or only banking companies organized under the free banking act, it is only necessary to refer to the title of this act, which distinctly avers that it is an act to further amend the — entitled "An Act to authorize free banking, passed March 21, 1851, (49 Ohio Laws, 41), and the acts amendatory and supplementary thereto." So that the conclusion to our minds is irresistable, that the legislature at this time had not in contemplation any other kind or character of a banking institution except those contemplated in the act of March 21, 1851, and that nothing contained in this amendatory act was intended by the Legislature, or by any fair construction thereof could be hold *or* include any other bank, except the class provided for in the original act, including those in existence, or any that might come into existence under the provisions thereof, during the time that said act remain- the law of Ohio.

So that having determined that Section 6 of this amendatory act, which is now found under the sectional numbering 3821-85 cannot by any construction, be held to include banking companies, other than those organized under the provisions of the original act, which this act amended, or sought to amend, the next question arises, as to whether or not the classification therein attempted is imperfect, false or un-atural, and that such classification is resorted to by the legislature for the purpose of giving a special law the appearance of a general law, to evade the constitutional limitations of the power of such legislature.

The Supreme Court has repeatedly said that the legislature has the power to classify, and that the legislative authority of this state is vested in the general assembly in the broadest terms by Section 1

of Article 1 of the constitution, subject only to the limitation elsewhere found in the constitution, and it is, therefore, not within the province of any court to declare void, and annul a statute by reason of a supposed violation of the principles of justice and common reason, if it be within the bounds of constitutional power, the courts having nothing whatever to do with the policy, the justice of the wisdom of the statute, so long as it cannot be said that it contravenes some constitutional provision.

Again our Supreme Court has said, in the case of Railway Company *vs.* Horstman, 72 O. S. page 93, at page 107: "We do not
20 accept without qualification the postulate of the court below, that "Classification cannot be made arbitrarily by the general assembly by seizing upon any incident or characteristic that may suit its purpose." And again, at the bottom of the same page, "that it is only where a false and unnatural classification has been resorted to that courts will interfere."

As a premise to the petitioner's contention here, we are asked to take judicial notice of the fact that there are only a very few such banks in Ohio that come within the contemplation of this section, but it is very doubtful to us whether this contention is correct or not. Certainly it is not of universal knowledge, for it is doubtful if one man in a hundred or even in a thousand of the population of Ohio has such knowledge; but though it may not be of common knowledge, yet if it is a matter that may be of common knowledge by reason of authorized statistics within the right of every man who cares to investigate, then it is a matter that courts will take judicial knowledge of, but that does not so clearly appear in this case. And yet conceding all that counsel claim for it in that behalf, what is the result? That there are some such distince banks existing is admitted, the number is not so important. That there may be tomorrow, next year or the year after a great many more is also within the contemplation of this statute, and was necessarily and properly within the contemplation of the legislature at the time it passed this act, and therefore having conferred privileges in the free banking act, it had a right to impose penalties and restrictions, and to classify them as distinct and separate organization- distinguished from other banks, and differing in their relations to the state and to the public at large, The first inquiry is whether or not, there is such a class existing in Ohio, and the number within that class is, to our minds, of little or no importance. If there is such a class, that is sufficient for the purposes of this case. If there are banks organized under this particular act, if other banks may be
21 organized under it, if the privilege of organizing such banks thereunder is and has been open to the people of the state, and there is almost an entire chapter of our laws devoted to the rights, liabilities and obligations of this character of bank, and penal statutes in reference to the misconduct of officers thereof, how can it be said that such banks are not a distinct and separate class of banking institutions. There are undoubtedly a great many reasons that may be urged why all banking companies in Ohio should be included within the provisions of this section. In fact, to our

minds, there is no valid objection thereto, and every argument that presents itself to our consideration is in favor thereof, but we are not the legislature, and — has been said by the Supreme Court in the 52 O. S. at page 99: "That if the legislature has erred in not including what has been excepted from the operation of the law, it is simply an error of judgment in the exercise of its authority, and cannot be reviewed by the courts." So that the remedy must be sought in the legislature itself. In order that a law of a general nature shall have uniform operation throughout the state, it must apply first territorially to the entire state. Second, to all individuals coming within the class designated by the legislature. And the power to make this classification is not only expressly, but necessarily lodged in the general assembly of the state, for there are few laws upon our statute books that necessarily affect every individual, but rather the great majority of our laws apply*ies* to individuals of a certain class.

On page 99 of the 52 O. S., in the case of the State *vs.* Nelson, Judge Burkett, who announced the opinion in that case, says:— "Very few statutes apply equally to every person in the state. Some apply only to males, some to females, some to minors, some to persons of unsound minds, some to office holders and some to criminals. As pointed out by Marshall, J., in Adler *vs.* Whitbeck, 44 Ohio State, 539, such classes are arbitrarily formed by the general assembly, and "if the legislature has erred in not including what has been excepted from the operation of the law, it is simply an error of judgment in the exercise of its authority, and cannot be reviewed by the courts."

Again, on page 100, quoting from the 70th New York, 22 page 351, Judge Burket, says:—"And does the validity of a law which is required to be general, and which is general in its terms, depend upon the number of subjects upon which it can operate, or upon the size of a class to which it applies. The questions must be answered in the negative."

We are of the opinion from the reading of these and other authorities that the legislature have a right to make such classification, and it is only when it appears that the classification attempted by the legislature is false and unnatural that courts ought to interfere and if there is a doubt in this behalf it must be resolved in favor of the constitutionality of the act, and we are, therefore, of the opinion that the act in question does not violate any of the provisions contended for by the petitioner. But even if we are mistaken about that, if this Section 6 of the amendatory act of April 24, 1879, is unconstitutional, it does not necessarily follow that the petitioner is entitled to a discharge. The original act of March 21, 1851, was passed before the adoption of the constitution of 1851, and, therefore, at the time of the adoption of such constitution was a valid and subsisting law of the State of Ohio, and it remained the law of Ohio, and is, still the law of Ohio unless it has been repealed by a valid act of the legislature. This original section 30 prohibited the acts complained of in this indictment, and but for Section 6 of the amendatory act, an indictment could be returned and prosecuted under the original act for

the commission of the acts therein charged. So that if the contention of the petitioner, that this section 6 of this amendatory act is unconstitutional is sustained, then it follows as a corrollary, that original section 30 is still in force,having never been repealed by a valid act of the legislature. We think the question is no longer an open one in Ohio, that where the legislature have enacted an unconstitutional amendment, and in the same act repealed the original constitutional law, that the repealing clause must fall with the attempted amendment, and to all intents and purposes, the law remains the same as if no such amendment and repeal had been attempted by the legislature.

23 In the case of the State of Ohio *ex rel. v.* Hall, 67 O. S. page 303, the Supreme Court, in the second paragraph of the syllabus, declares: "The repealing section of said act is also void." And on page 306, the Court say, and this opinion is rendered by the Court: The amending act of April 30, 1902 including its repealing section, is wholly void, and Section 1240 Revised Statutes, stands as though such amendment had not been attempted."

This is but following a long line of decisions in Ohio upon this subject. In the 66 Ohio St. page 482 and 483, Judge Shauck, announcing the opinion of the court in the case of State *ex rel.* Knisely *v.* Jones *et al.*, says: "Applying to the case a doctrine with which the lawyers of the state are quite familiar, the repealing section of the present act is inoperative unless its provisions for organization of the board are valid. The system provided by the former legislation being still in full operation, is should continue unless, by a valid act, a system to succeed it has been provided."

In the 60 O. S. at page 273, Wilmot *et al.*, Buckley *et al.*, the court says: "The said section being inoperative, the repealing section contained in the same act is also inoperative, and this leaves section 2926b, as amended April 28, 1890, in force."

In 48 O. S. page 11, the case of the State *ex rel. v.* Smith *et al.*, at page 219, in the opinion by the court, we find the following language: "We see no other valid objection to the law. And as the act itself is invalid, the repealing clause must also be held inoperative as we cannot suppose that the legislature would have repealed this act creating the Board of City Improvements without providing any substitute therefore."

Counsel for the petitioner make the contention that under this doctrine announced in the 48th Ohio State, that there would be no reason for reinstating an act when the old law in all material respects is just like the new one; that there would be no sense or justice in reinstating old Section 30 with its archaic provisions as to paper

24 money after the power to issue it had been taken away. There is, no doubt much logic in this reasoning, but it does not apply to the principle involved here. The question is not as to the reasons and purposes for reinstating such law, but the principle underlying this question is that the invalid act did not effect the valid one that it attempted to repeal, and the court is not now reinstating this act, but would be simply finding that there was no valid act that effected its repeal, and that it simply remains the law of Ohio, because it has

not been repealed by any valid enactment of the repealing power of the state.

So that we are not concerned as to the reasons why it should or should not be reinstated, for we are not reinstating it, but simply determining that no law of the state is repealed by an unconstitutional enactment of the legislature of Ohio purporting to repeal the same. So for this reason, even though all the other contentions of counsel for petitioner be correct the Common Pleas Court has jurisdiction of the cause, and there is a valid constitutional law under which this prosecution is proceeding, and the petitioner is not unlawfully deprived of his liberty and must be remanded to the custody of the sheriff, and such order is accordingly made at the costs of the petitioner and his exceptions are here noted.

We are advised by counsel for this petitioner, that there are similar indictments pending in Stark County court in which they desire to present the same question as is here presented with a view of having it finally determined by a court of last resort, and to this end it is ordered that if any of such application is made to any one of the judges of this court, that he allow the writ to issue and upon the return of the Sheriff showing a similar situation with this case, that a similar order be entered therein in each of said cases,

(Signed) MAURICE H. DONAHUE.
T. T. McCARTY.
FRANK TAGGART.

25 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 10 is a true copy of the Record in cause No. 707, and from page 10 to page 14 is a certified copy of the Mandates from the Supreme Court and the Supersedeas Bond filed in cause No. 707, and from page 15 to page 24 is a certified copy of the Circuit Court's Opinion filed in Cause No. 707—In the matter of the Application of Corwin D. Bachtel for *Habeas Corpus* as the same appears upon the Records of said Court, and I further certify that I have carefully compared said foregoing copy with the original Record, and that the same is a full correct transcript thereof.

Witness my hand and the seal of said Court, at Canton, Ohio, this 15th day of September A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk.*

Endorsed on cover: File No. 20,412. Ohio supreme court. Term No. 447. Corwin D. Bachtel, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,412.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 448.

HARVEY H. MILLER, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 9, 1906.

(20,413.)

(20,413.)

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INDEX.

	Original.	Print.
Certificate of clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order suspending judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Caption	1	11
Petition for writ of *habeas corpus*	1	11
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Indictment for misapplication	5	14
Indictment for misapplication	11	18
Indictment for misapplication	14	20
Order postponing hearing and fixing bond	19	24
Recognizance	19	25
Order of continuance	20	25
Order dismissing application and remanding petitioner	20	25
Order of supreme court of Ohio suspending judgment	22	27
Recognizance for suspension of judgment	22	27
Mandate from supreme court of Ohio	23	28
Clerk's certificate	26	30

a

Supreme Court of Ohio.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10211, wherein Harvey H. Miller was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D. 1906.

Witness my hand and seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b

Supreme Court of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Assignment of Errors.

Now comes Harvey H. Miller, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an Act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Harvey H. Miller prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

VIRGIL P. KLINE,
AUSTIN LYNCH,
WM. A. LYNCH,
Attorneys for Harvey H. Miller, Plaintiff in Error.

d [Endorsed:] No. 10211. Supreme Court of Ohio. Harvey H. Miller, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of Errors. Filed Sep. 14, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Virgil P. Kline, Austin Lynch, and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Harvey H. Miller assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates Annotated Statutes of

Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Harvey H. Miller prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

VIRGIL P. KLINE,
AUSTIN LYNCH,
WM. A. LYNCH,
Attorneys for Harvey H. Miller, Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of error allowed; and the said Harvey H. Miller having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictment until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

g [Endorsed:] No. 10211. Supreme Court of Ohio. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Virgil P. Kline, Austin Lynch, and Wm. A. Lynch, Attorneys for plaintiff in error.

h HARVEY H. MILLER, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Harvey H. Miller as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

HARVEY H. MILLER.

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

THE BANKERS' SURETY COMPANY,
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authorty of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven Thousand Dollars over and above its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me, September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

Duplicate bond signed.

JOSEPH McKENNA,
Asso. Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10211. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Harvey H. Miller and R. Frank Wilson, Sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Harvey H. Miller as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day September in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10211. Supreme Court of United States. Harvey H. Miller, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Harvey H. Miller is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio,

o [Endorsed:] No. 10211. Supreme Court of United States. Harvey H. Miller, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition in Error.

Plaintiff in error, Harvey H. Miller, states that in the vacation after the February Term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to-wit: On May 24th, 1906, the plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a Writ

of *Habeas Corpus* and on that day applied to the Honorable Thomas T. McCarty, one of the Judges of said Circuit Court for a Writ of *Habeas Corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which Writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said Writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said Writ; that in the vacation after said February term 1906, to-wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application, writ and return, that said plaintiff in error, the petitioner herein, should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to-wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio), was not void and invalid as in violation of the provisions of Article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2, Section 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the Act of March 21, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of Section 1 of the 14th amendment of the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

6th. And for other errors apparent on the face of the record.

Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

VIRGIL P. KLINE AND
WM. A. LYNCH,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16th, 1906.

R. FRANK WILSON,
By CHARLES P. UPHAM &
JOHN W. CRAINE,
His Attorneys.

s In the Supreme Court of the State of Ohio.

10211.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Entry.

MONDAY, *June* 18, 1906.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark Co., Ohio, until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10211.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking" passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates, Annotated Statutes of Ohio; that said section of

said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said indictments were void for the reason among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments which demurrer was by said Court of Common Pleas heard and overruled;

u that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and write of the said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section 26 article two of the constitution of the State of Ohio, also section one of the fourteenth amendment to the constitution of the United States; that the judge of said Circuit Court petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section 26 article two of the constitution of the State of Ohio, or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section- (3821-85) of the Annotated

v Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one and section 26 article two of the constitution of the state of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one, section two article one and section 26 article two of the constitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the

United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—.

Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to Circuit Court of Stark County.

June 18. Petition in error, Waiver, Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment. Bond $7000.00. J. 21.
18. Copy of entry suspending judgment sent Clerk.
29. Judgment affirmed. J. 21, 170.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
" " Bond in duplicate filed.
" " Writ of Error filed.
" " Citation on Writ, and entry of appearance filed.

x Supreme Court of Ohio.

10211.

HARVEY H. MILLER, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme

Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.*

1 At a term of the Circuit Court begun and held at the Court House in the City of Canton within and for the County of Stark, in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 18th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said court then and there held among other things appears the following, to-wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 716.

In the Matter of the Application of HARVEY H. MILLER for a Writ of *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 11th day of June in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's office of said Circuit Court a certain petition in this cause, which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of HARVEY H. MILLER for a Writ of *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by R. Frank Wilson, sheriff of said county, at the

county jail of said county. The pretended cause of said imprisonment is an order made by the Court of Common Pleas of said County, committing the petitioner to detention in the county jail of said county to await his trial in said court upon certain pretended indictments, numbered 2507, 2519 and 2520, which said
2 pretended indictments were presented under and solely by virtue of a certain statute, to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879, (3821-85) of the Annotated Statutes of Ohio: that said statute is in contravention of the 14th amendment of the constitution of the United States and of article 1, sections 1 and 2 and article 11, section 26 of the constitution of Ohio, is unconstitutional and void, and that said court was without jurisdiction, power or authority to issue said order and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

HARVEY H. MILLER,
By VIRGIL P. KLINE,
WM. A. LYNCH,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

Harvey H. Miller, being duly sworn says that he is the petitioner in this proceeding; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

HARVEY H. MILLER.

Sworn to by said Harvey H. Miller before me and by him signed in my presence this 11th day of June, 1906.

JACOB J. WISE, *Clerk,*
By A. W. AGLER, *Deputy.*

And afterwards on the 11th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 457.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came Harvey H. Miller and his attorneys Virgil P. Kline, and Wm. A. Lynch and submitted to the undersigned, one of the Judges of said Court his petition for a Writ of *Habeas Corpus*, which had been filed in the office of the Clerk of said Court, and said petition being heard it is now here ordered that the prayer of the petitioner for the issuance of said Writ be granted and that the Clerk of the Court shall issue the same to the sheriff of said

county commanding him to have the body of said Harvey
3 H. Miller before the undersigned at the Court House, Court Room Number 2 at one o'clock P. M., this day.

Done at Canton, June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon on this same day there was duly issued from the Clerk's office of said court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to-wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Harvey H. Miller, by you imprisoned and restrained of his liberty, as it is said you take and have before Thos. T. McCarty, a Judge of our Circuit Court, or in case of his absence or disability, before some other Judge of the same Court, at the Court House in said County, forthwith, to do and receive what said Judge shall then and there consider concerning him in his behalf; and summon the said sheriff then and there to appear before said Judge to show the cause of the taking and detention of the said Harvey H. Miller. Witness my signature and the seal of said court, at Canton, Ohio, this 11th day of June, A. D. 1906.

JACOB J. WISE,
[SEAL.] *Clerk of said Circuit Court.*

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's office of said Court the foregoing writ of *habeas corpus* issued to said sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

Received this writ on the 11th day of June, 1906, and in pursuance of the command thereof, I hereby certify that the within named Harvey H. Miller was taken into my custody on the 11th day of June, 1906, and is now detained by me, by virtue of an order of Hon. W. W. Hole, one of the Judges of the Court of Common Pleas of the First Sub-division of the 9th Judicial District of the
4 State of Ohio and in Stark County, and by reason of this surrender of the said Harvey H. Miller, by his sureties in open court on an indictment as hereinafter described of the said

Court of Common Pleas in Stark County, Ohio, on June 11, 1906, the said Harvey H. Miller having been heretofore indicted by the Grand Jury of Stark County, Ohio, for an offense under section 3821-85 of the Revised Statutes of the State of Ohio, and known as the free banking act, a copy of said indictments are hereto attached marked "Exhibit A," and made a part of this return, and I now have the body of the said Harvey H. Miller before this Court as within commanded.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

5 *Indictment for Misapplication of Funds of the Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Charles H. Van Horn, late of said County, on the 4th day of January, in the year of our Lord one thousand nine hundred and five, at the County of stark aforesaid, being then and there the Teller and clerk of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking company on or about the fourth day of January, 1905, and at the time of the willful misapplication of the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking company, and the said Charles H. Van Horn having by virtue of his said office, a partial superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 4th day of January, 1905, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as teller and clerk aforesaid, by virtue of his said office, with intent then and there on the part of him the said Charles H. Van

Horn, teller and clerk aforesaid, to convert the same to the
6 use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of the said Charles H. Van Horn, teller and clerk as aforesaid, to then and there and thereby injure and defraud to said The Canton State Bank, the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

At sight, Pay to the order of C. D. Bachtel, Cas. Three thousand dollars, Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to The Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn, teller and clerk as aforesaid; the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn, teller and clerk as aforesaid, was then and there made from and by the use of
said moneys, funds and credits of the said The Canton State
7 Bank, by the said Charles H. Van Horn teller and clerk as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by the cashing of said draft to H. H. Miller, Tr., who is the said Harvey H. Miller, of The Miller Co., the sum of Three thousand ($3000.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Charles H. Van Horn, Teller and clerk as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Three thousand ($3,000.00) dollars, became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton State Bank, and the Jurors of the Grand

Jury aforesaid, do further find and present that Harvey H. Miller late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank as aforesaid, on or about the 4th day of January, 1905, aid, abet, incite and procure the said Charles H. Van Horn, teller and clerk as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to wit: the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Charles H. Van Horn to be then and there the teller and clerk of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the Charles H. Van Horn aforesaid, late of the county
8 aforesaid, at the time and date aforesaid, and at the County aforesaid, being then and there the teller and clerk of a certain banking company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Company, on or about January 4th, 1905, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Charles H. Van Horn having by virtue of his said office as teller and clerk a partial superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his control, care and custody as teller and clerk as aforesaid, by virtue of his said office with intent then and there on the part of him the said Charles H. Van Horn, teller and clerk as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of him the said Charles H. Van Horn teller and clerk as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

Three thousand dollars. Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

9 which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon the Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Co., all of which was well known to the said Charles H. Van Horn teller and clerk as aforesaid, of The Canton State Bank, as aforesaid, at the time he cashed said draft aforesaid, nor was there any consideration of any kind or value moving from the said, The Miller Co., to The Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn teller and clerk as aforesaid, at the time he cashed said draft as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn teller and clerk as aforesaid, by virture of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Three thousand ($3000.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit and upon the order of the said, The Miller Co., in due course of business whereby the said sum of Three thousand ($3000.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of
10 Stark, in the State of Ohio, aforesaid did unlawfully, willfully knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about January 4th, 1905, aid, abet, incite and procure the said Charles H. Van Horn teller and clerk aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit: the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there well knowing the said Charles H. Van Horn to be then and there teller and clerk of the said The Canton

State Bank as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of Funds of The Canton State Bank and Count for Misapplication of Credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 15th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

11 *Indictment for Willfully Misapplying the Money, Funds, and Credits of the Canton State Bank, with Count for Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel late of said County, on the 1st day of July in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid said Corwin D. Bachtel then and there being the cashier of and a director of a certain banking Company, known as The Canton State Bank, a corporation duly incorporated and organized under the law of the State of Ohio, known as and being the free banking Company on or about July 1, 1904, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company did then and there

willfully, unlawfully and fraudulently misapply to the use of The Miller Co., certain moneys, funds and credits of said banking Company to the amount of Two Thousand ($2000.00) dollars, then in the hands of The First National Bank of Cleveland, Ohio, and owing by said The First National Bank of Cleveland, Ohio, to said The Canton State Bank, by signing his name as cashier to, and executing and delivering to The Miller Co., a certain draft or check, a copy of which is as follows:

The Canton State Bank.

No. 4782.

CANTON, OHIO, *July 1st*, 1904.

Pay to the order of Miller Co. $2000.00, Two thousand Dollars.
C. D. BACHTEL, *Cashier.*

First National Bank, Cleveland, O.

and which draft or check so signed, executed and delivered as
12 aforesaid was without any consideration therefor whatsoever, and which draft or check was paid by said The First National Bank of Cleveland, Ohio, out of said moneys funds and credits aforesaid, and charged by said The First National Bank of Cleveland, Ohio, to said The Canton State Bank, and said draft or check at said time, was signed, executed and delivered and said moneys, funds and credits willfully, misapplied as aforesaid, with the intent on the part of said Corwin D. Bachtel to injure and defraud said The Canton State Bank, the President thereof Austin C. Brant and certain directors thereof, William Wagner, William R. Zollinger and W. H. Hoover and the stockholders, depositors and creditors of said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, inquiring as aforesaid, on their said oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that Harvey H. Miller late of the county aforesaid, before and at the time the said moneys, funds and credits of said The Canton State Bank were willfully misapplied by the said Corwin D. Bachtel as aforesaid, at the time and date aforesaid, and at the County aforesaid, did feloniously, willfully, fraudulently and maliciously aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, of the said The Canton State Bank as aforesaid, the said moneys, funds and credits aforesaid, in manner and form aforesaid, to willfully misapply as aforesaid, he, the said Harvey H. Miller, then and there well knowing that he, the said Corwin D. Bachtel to be then and there the cashier of the said, The Canton State Bank as aforesaid, and that said The Canton State Bank was incorporated and organized and doing business as a banking Company as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Willfully misapplying the money funds and credits of The Canton State Bank. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

13

Witness my hand and the seal of said court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

14 *Indictment for Misapplication of Funds of The Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel late of said County, on the 13th day of August in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, being then and there the cashier and a director of a certain Banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851 and found in the Revised Statutes of Ohio, and which banking company on or about the 13th day of August, 1904, and at the time of the willful misapplication of the moneys, funds and credits of said Bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office, the general superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 13th day of August, 1904, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as cashier aforesaid, by

virtue of his said office, with intent then and there on the part of him the said Corwin D. Bachtel cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty three
15 hundred and fifty ($2350.00) dollars, and with the further intent on the part of the said Corwin D. Bachtel, cashier as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft when so cashed was in the words and figures following, to wit:—

$2350. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty three hundred and fifty dollars with exchange. Value received and charge to account of

THE MILLER CO.,
By H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co. was not indebted in the sum of Twenty-three hundred and fifty ($2350.00) dollars, nor in any other sum approximating Twenty-three hundred and fifty dollars ($2350.00) to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to the Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel, cashier as aforesaid, was then and there made from and by the use of said moneys, funds and credits of the said The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by the cashing of
16 said draft to H. H. Miller, Tr., who is the said Harvey H. Miller, of *of* the said The Miller Co., the sum of Twenty-three hundred and fifty ($2350.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Corwin D. Bachtel, cashier as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty dollars ($2350.00) became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton

State Bank, and the Jurors of the Grand Jury aforesaid, do further find and present that Harvey H. Miller late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank, as aforesaid, on or about the 13th day of August, 1904, aid, abet, incite and procure the said Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to-wit: the sum of Twenty three hundred and fifty ($2350.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Corwin D. Bachtel to be then and there the cashier of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the said Corwin D. Bachtel aforesaid, late of the county aforesaid at the time and date aforesaid, and at the County aforesaid, being then and there the cashier of a certain banking Company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Com-
17 pany, on or about August 13th, 1904, and at the time of willfully misapplying the moneys funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel having by virtue of his said office as cashier, the general superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his control, care and custody as cashier as aforesaid, by virtue of his said office with intent then and there on the part of him the said Corwin D. Bachtel, cashier as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Twenty-three hundred and fifty ($2350.00) dollars, and with the further intent on the part of him the said Corwin D. Bachtel cashier as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Corwin D. Bachtel, cashier as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$2350.00. AUG. 13, 1904.

At sight, pay to the order of Canton State Bank, Twenty-three hundred and fifty dollars, with exchange. Value received and charge to account of

THE MILLER CO.,
Per H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co.

which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and ficticious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Twenty-three hundred and fifty ($2350.00) dollars, nor in any other sum approximating Twenty-three hundred and fifty ($2350.00)
18 dollars, to the said The Miller Co., all of which was well known to the said Corwin D. Bachtel, as aforesaid, of The Canton State Bank, as aforesaid, at the cashed said draft aforesaid, nor was there any consideration kind or value moving from the said, The Miller Co., to the Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Corwin D. Bachtel cashier as aforesaid, at the time he cashed said draft as aforesaid, The said cashing of the said draft so made as aforesaid, by the said Corwin D. Bachtel as aforesaid, was then and there made from and by the use of the moneys, funds and credits of the said, The Canton State Bank, by the said Corwin D. Bachtel, cashier as aforesaid, by virtue of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Twenty-three hundred and fifty ($2350.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit upon the order of the said, The Miller Co., in due course of business whereby the said sum of Twenty-three hundred and fifty ($2350.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of Stark, in the State of Ohio aforesaid, did unlawfully willfully, knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about August 13th, 1904, aid, abet, incite and procure the said, Corwin D. Bachtel, cashier as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit:—the sum of Twenty-

three hundred and fifty dollars, ($2350.00) as aforesaid, he,
19 the said Harvey H. Miller, then and there well knowing the said Corwin D. Bachtel to be then and there cashier of the said, The Canton State Bank, as aforesaid, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of funds and credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

Journal B, Page 457.

And thereupon at this same term and date, to wit:—

Be it remembered that on this day, at the Court House, Court Room Number 2, at the city of Canton, in said county, R. Frank Wilson, the sheriff of said county having now appeared with the body of said Harvey H. Miller before the undersigned judge of said court in pursuance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Harvey H. Miller before the judges of our said Circuit Court, or any one of them, at the same place on Saturday the 16th day of June, 1906 at 9 o'clock A. M. unless the said Harvey H. Miller shall enter into a recognizance to the State of Ohio, in due form to appear before said judges or any one of them at that time and place, and abide any order that may be made by them in the premises, in the sum of Seven Thousand Dollars, with sureties to my acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, Ohio, this June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court,
Stark County, Ohio.

And thereupon at this same term and date to wit:—

Journal B, Page 458.

This day came Harvey H. Miller and with F. W. Miller and M. W. Miller as his sureties entered into a recognizance before the Court in the sum of Seven Thousand Dollars ($7000.00) which recognizance reads and is in the words and figures following to wit.

"Be it remembered that on the 11th day of June A. D. 1906, personally appeared before Thomas T. McCarty, one of the Judges of said court and acknowledged themselves to owe to the State of Ohio the penal sum of $7000.00 to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:—The condition of the above obligation is such that if the said Harvey H. Miller shall appear before the Judges of said Circuit Court or any one of them on Saturday, June 16th 1906 at 9 o'clock A. M. at the Court House in Court Room No. 2 in said County and abide the further order and judgment of said Judges or any one of them and not depart without leave, then this obligation to be void, otherwise to be in full force and effect.

HARVEY H. MILLER.
F. W. MILLER.
M. W. MILLER.

Approved June 11th 1906.
JACOB J. WISE, *Clerk.*

And afterwards on the 16th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 464.

This cause came on for hearing before Hon. Thos. T. McCarty, one of the said Judges of said Circuit Court upon the motion of the defendant, Harvey H. Miller, for a continuance upon consideration whereof the court continues this cause until Monday, June 18th, 1906 at 8:30 o'clock A. M. at the Court House, in Canton, Ohio. The bond given in this cause to remain in full force and effect.

And afterwards on the 18th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 465.

This cause came on to be heard at Chambers after the February Term 1906, to-wit:—On June 18th, 1906 before Honorable T. T. McCarty, one of the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant

Harvey H. Miller for a Writ of *Habeas Corpus* and upon the return and exhibits attached thereto of R. Frank Wilson as sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of counsel, said Judge finds that the said applicant Harvey H. Miller was at the time of the filing
21 of said applications in the custody of R. Frank Wilson as sheriff of Stark County, Ohio, by virtue of an order of Court of Common Pleas of said County for his detention and imprisonment in the jail of said County to await his trial upon indictments found and returned by the Grand Jury of said Stark County against the said Harvey H. Miller charging him with having committed certain offenses set forth in said indictments contrary to Section 30 of an act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st, 1851, as the same was amended on April 24th, 1879, and now known as Section (3821-85) of the annotated statutes of Ohio. And the said Judge finds that said section 30 of said Act is not in contravention of Article 1 of Sections 1 and 2, and of Article 2. Section 26 of the Constitution of Ohio and that it is not in contravention of the 14th Amendment of the Constitution of the United States as alleged by the said Harvey H. Miller in his said application and the Court further finds that said Harvey H. Miller is not and was not at the time of the filing of said application unlawfully detained by the respondent R. Frank Wilson as sheriff of said Stark County and that the application of said Harvey H. Miller for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by said Judge that the application of the said Harvey H. Miller for said Writ of *Habeas Corpus* be dismissed and that said Harvey H. Miller be remanded to the custody of said R. Frank Wilson respondent as sheriff of Stark County, Ohio, and by virtue of said orders of the Court of Common Pleas to be by him held for trial under the indictments set up and referred to in these proceedings. It is further considered that the said Harvey H. Miller pay the costs of these proceedings taxed at $— and for which execution is awarded against him and to all of the findings, orders and judgment aforesaid, said Harvey H. Miller now here excepts.

T. T. McCARTY.

Done at Canton, this 18th day of June A. D. 1906.

And afterwards on the 18th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following to-wit:—

22 *Mandate from Supreme Court Filed.*

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio of the Term of January, A. D. 1906, to-wit, Monday, June 18th.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

On motion of plaintiff in error and for good cause shown, it is hereby ordered by the Court that the execution of the judgment herein be suspended, upon plaintiff in error giving an undertaking in the sum of $7,000.00, subject to the approval of the Clerk of Courts of Stark County, Ohio, until the final determination of this action in this Court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing Entry is truly taken and correctly copied from the Records of said Court, to wit: from Journal No. 21, page 130.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 18th day of June, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

And thereupon on this same day there was duly filed in the Clerk's office of said Court a certain bond in this cause which bond reads and is in the words and figures following to-wit:

Recognizance for Suspension of Execution of Sentence.

In Supreme Court of Ohio.

THE STATE OF OHIO
vs.
HARVEY H. MILLER.

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, That on the 18th day of June A. D. 1906, Harvey H. Miller, and F. W. Miller and M. W. Miller his sureties personally appeared before Jacob J. Wise, Clerk of Courts in and for the County aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following, to-wit:— The condition of this Recognizance is such, that if the above bound

Harvey H. Miller shall personally be and appear before the Supreme Court of Ohio until the above case in error of said Harvey H. Miller is determined and abide the judgment or sentence of the Court, and not depart without leave, then this recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

HARVEY H. MILLER.
F. W. MILLER.
M. W. MILLER.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk.*

23 *Mandate from Supreme Court Filed.*

And afterwards on the 2nd day of July A. D. 1906 there was duly filed in the Clerk's office of said court a certain mandate from Supreme Court in this cause, which mandate reads and is in the words and figures following to-wit:—

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

HARVEY H. MILLER
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

The cause came on to be heard upon the petition in error and was argued by counsel, of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit:—section thirty of an act of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said Court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the Constitu-

tion of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County, for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said
24 imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one, article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment of the Constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section (3821-85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration, whereof, it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment to the Constitution of the United Sates or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this Court that the
25 judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court, be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered

that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered, That a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the seal of said court, this twenty fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of our Supreme Court of Ohio, in the case of Harvey H. Miller *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness Lawson E. Emerson, Clerk of our Said Supreme Court of Ohio, at Columbus, this 24th day of July 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

26 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 21 is a true copy of the Record in cause No. 716, and from page 22 to page 25 is a certified copy of the Mandates from the Supreme Court and the Supercedeas Bond filed in cause No. 718. In the matter of the Application of Harvey H. Miller for a Writ of *Habeas Corpus* as the same appears upon the Records of said Court, and I further certify that I have carefully compared said foregoing copy with the original Record, and the same is a full and correct transcript thereof.

Witness my hand and the seal of said court, at Canton, Ohio, this 15 day of September, A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk*.

Endorsed on cover: File No. 20,413. Ohio supreme court. Term No. 448. Harvey H. Miller, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,413.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 449.

WILLIAM L. DAVIS, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 9, 1906.

(20,414.)

(20,414.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Certificate of the clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order to suspend judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Caption	1	11
Petition for writ of *habeas corpus*	1	11
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Indictment for abstraction, &c.	5	14
Indictment for willful assignment of bonds, &c.	9	16
Indictment for misapplication, &c.	14	20
Indictment for misapplication, &c.	17	22
Indictment for misapplication, &c.	20	24
Indictment for misapplication, &c.	23	26
Order postponing hearing and fixing bond.	26	28
Recognizance.	26	28
Order for continuance.	27	28
Order dismissing application and remanding petitioner.	27	29
Order of supreme court of Ohio suspending judgment.	29	30
Recognizance to suspend judgment.	29	30
Mandate from supreme court of Ohio.	30	31
Clerk's certificate.	34	33

a

Supreme Court of Ohio.

10212.

WILLIAM L. DAVIS, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10,212, wherein William L. Davis was plaintiff in error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D., 1906.

Witness my hand and Seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D., 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b

Supreme Court of Ohio.

No. 10212.

WILLIAM L. DAVIS, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Assignment of Errors.

Now comes William L. Davis, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the

privileges and immunities of the plaintiff in error as a citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States — being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error William L. Davis prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

FRANCIS J. WING,
WEBBER & TURNER,
Attorneys for William L. Davis, Plaintiff in Error.

d [Endorsed:] No. 10212. Supreme Court of Ohio. William L. Davis, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of Errors. Filed Sep. 14, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Francis J. Wing, and Webber & Turner, Attorneys for plaintiff in error.

e **Supreme Court of Ohio.**

No. 10212.

WILLIAM L. DAVIS, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said William L. Davis assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was re-

pugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error William L. Davis prays that the said judgment of the Supreme Court of Ohio dated June 29, 1906 be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

FRANCIS J. WING AND
WEBBER & TURNER,
Attorneys for William L. Davis, Plaintiff in Error.

STATE OF OHIO, *Supreme Court, ss:*

Writ of error allowed; and the said William L. Davis having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictment until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Associate Justice.

Sept. 21st 1906.

g [Endorsed:] No. 10212. Supreme Court of Ohio. William L. Davis, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. Francis J. Wing and Webber & Turner, Attorneys for plaintiff in error.

h WILLIAM L. DAVIS, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we William L. Davis as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and

truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

WILLIAM L. DAVIS.
THE BANKERS' SURETY COMPANY.
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authority of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven thousand Dollars over and above its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

Duplicate bond signed.

JOSEPH McKENNA,
Associate Justice.

Sept. 21st, 1906.

j [Endorsed:] No. 10212. William L. Davis, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William L. Davis and R. Frank Wilson, sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said William L. Davis, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of September, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10212. Supreme Court of Ohio. William L. Davis, Plaintiff in error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein William L. Davis is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

CANTON, OHIO, *September* 25, 1906.

I, attorney- of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorneys for R. Frank Wilson, Sheriff of Stark County, Ohio.

o [Endorsed:] No. 10212. Supreme Court of United States. William L. Davis, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10212.

WILLIAM L. DAVIS, Plaintiff in Error,
vs.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition in Error.

Plaintiff in error William L. Davis states that in the vacation after the February term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to wit: on May 24th, 1906, the Plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a writ

of *habeas corpus* and on that day applied to the Honorable Thomas T. McCarty, one of the judges of said Circuit Court for a writ of *habeas corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said writ; that in the vacation after said February term, 1906, to wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application writ and return, that said plaintiff in error the petitioner therein should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the
q plaintiff in error pay the costs of said proceedings taxed at $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the act of March 21st, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2 Section 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879 (Section 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of section 1 of the 14th amendment to the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

6th. And for other errors apparent on the face of the record.

r Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

WEBBER & TURNER AND
F. J. WING,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16, 1906.

R. FRANK WILSON,
By CHARLES C. UPHAM &
JOHN W. CRAINE,
His Attorneys.

s In the Supreme Court of the State of Ohio.

MONDAY, *June* 18, 1906.

10212.

WILLIAM L. DAVIS
vs.
FRANK WILSON, Sheriff.

Entry.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark County, O., until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10212.

WILLIAM L. DAVIS
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879

(3821-85) Bate's Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid was unconstitutional and that said statute and indictments were void for the reason, among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio in and for the said
u Stark County for a writ of *habeas corpus* alleging in said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one, article one, section two article one, and section twenty six, article two of the constitution of the State of Ohio also section one of the fourteenth amendment of the constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section twenty six, article two of the constitution of the State of Ohio or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking," as amended April 24, 1879, section (3821-85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one, article one, section two, article one, and section twenty six, article two of the
v constitution of the State of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that this statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one,

section two, article one and section twenty six, article two of the constitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered that a special mandate be sent the judges of the Circuit Court of Stark County to carry this judgment into execution.

w

Supreme Court of Ohio, January Term, 1906.

No. 10212.

WILLIAM L. DAVIS, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to the Circuit Court of Stark County.

June 18. Petition in error, Waiver, Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment. Bond $7000.00. J. 21.
18. Copy of entry suspending judgment sent Clerk.
29. Judgment affirmed. J. 21, 174.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition for Writ of Error filed.
4. Bond in duplicate filed.
4. Writ of Error filed.
4. Citation on Writ, and entry of appearance filed.

x

Supreme Court of Ohio.

10212.

WILLIAM L. DAVIS, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the

record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case and upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio, this fourth day of October, A. D. 1906.

[Seal the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.*

1 At a term of the Circuit Court begun and held at the Court House in the City of Canton within and for the County of Stark, in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 18th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of Said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said Court then and there held among other things appears the following, to wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 719.

In the Matter of the Application of WILLIAM L. DAVIS for Writ of *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 11th day of June in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's Office of said Circuit Court a certain petition in this cause which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of WILLIAM L. DAVIS for a Writ of *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by R. Frank Wilson sheriff of said county at the county jail of said county.

The pretended cause of said imprisonment is an order made by the Court of Common Pleas of said county, committing the petitioner to detention in the county jail of said county to await his trial in said court upon certain pretended indictments, numbered 2508-2509-2511-2512-2513 and 2514 which said pretended indictments were presented under and solely by virtue of a certain statute, to
2 wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879, (3821-85) of the Annotated Statutes of Ohio; that said statute is in contravention of the 14th amendment of the constitution of he United States and of article 1, sections 1 and 2 and article II, section 26 of the constitution of Ohio, is unconstitutional and void, and that said court was without jurisdiction, power or authority to issue said order and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

WILLIAM L. DAVIS,
By WEBBER & TURNER,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

William L. Davis being duly sworn says that he is the petitioner in this proceeding; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

WILLIAM L. DAVIS.

Sworn to by said William L. Davis before me and by him signed in my presence this 11th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

And afterwards on the 11th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 462.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came William L. Davis and his attorneys Webber & Turner and submitted to the undersigned, one of the judges of said court his petition for a writ of *habeas corpus*, which had been filed in the office of the clerk of said court, and said petition being heard it is now here ordered that the prayer of the petitioner for the issuance of said writ be granted and that the clerk of the court shall issue the same to the sheriff of said county commanding him to have the body of said William L. Davis before the undersigned at the Court House, Room number 2 at one o'clock P. M. this day.

Done at Canton June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon on this same day there was duly issued
3 from the Clerk's Office of said Court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of William L. Davis by *him* imprisoned and restrained of his liberty, as it is said, you take and have before Thos. T. McCarty, a Judge of our Circuit Court, or in case of his absence or disability, before some other Judge of the same Court, at the Court House in said County, forthwith, to do and receive what said Judge shall then and there consider concerning him in his behalf; and summon the said Sheriff then and there to appear before said Judge to show the cause of the taking and detention of the said Wm. L. Davis.

Witness my signature and the seal of said Court at Canton, this 11th day of June, A. D. 1906.

JACOB J. WISE,
Clerk of said Circuit Court. [SEAL.]

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's Office of said Court the foregoing writ of *habeas corpus* issued to said Sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

Received this writ on the 11th day of June, 1906, and in pursuance of the Command thereof, I hereby certify that the within named William L. Davis was taken into my custody on the 11th day of June, 1906, and is now detained by me by virtue of an order of Hon. W. W. Hole, one of the Judges of the Court of Common Pleas of the First Subdivision of the 9th Judicial District of the State of Ohio and in Stark County, and by reason of this surrender of the said William L. Davis, by his sureties in open court on an indictment as hereinafter described of the said Court of Common Pleas in Stark County, Ohio, on June 11, 1906. The said
4 William L. Davis having been heretofore indicted by the Grand Jury of Stark County, Ohio, for an offense under section 3821-85 of the Revised Statutes of the State of Ohio, and known as the free banking act, a copy of said indictments are hereto attached marked "Exhibit A" and made a part of this return, and

I now have the body of the said William L. Davis before this Court as within commanded.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

5 *Indictment for Abstraction, Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inqure of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find — present: That William L. Davis and Corwin D. Bachtel, late of said County, on or about the 13th day of December in the year of our Lord, one thousand nine hundred and four, at the County of Stark aforesaid, said William L. Davis being then and there an officer, to wit: Vice President and a director of The Canton State Bank, a corporation, incorporated and organized as a banking Company under the law of the State of Ohio, known as the free banking act passed 1851, by the Legislature of Ohio, and which banking Company, on or about the 13th day of December, 1904, and at the time of the abstraction of the personal property of said banking Company, to wit: the certificates of stocks as hereinafter described, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking Company, and said Corwin D. Bachtel being then and there and at the time an officer, to wit: the cashier and a director of The Canton State Banking Company, certain property, to wit: certain certificates for 350 shares of the capital stock of said banking Company; to wit: Certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares Certificate No. 244 for 40 shares and Certificate No. 256 for ten shares which said certificates of stock had theretofore been issued by the said, The Canton State Bank to the said William L. Davis, and which said certificate of stock had theretofore been hypothecated by the said William L. Davis with the said

6 The Canton State Bank, as security for moneys theretofore received by the said William L. Davis from the said, The Canton State Bank, and which said certificates were of the face value of Fifty ($50.00) dollars per share, and upon which had been paid in thereon, the sum of Thirty ($30.00) per share, and which said

certificates were then and there of the value of One hundred and five thousand ($105000.00) dollars, of the personal property of and belonging to the said, The Canton State Bank, they the said William L. Davis and Corwin D. Bachtel officers of the said, The Canton State Bank as aforesaid, did, at the time and date aforesaid, and at the County aforesaid, with the intent on their part to injure and defraud the said, The Canton State Bank, unlawfully and fraudulently abstract from the possession of the said, The Canton State Bank, said certificates of stock heretofore described without the authority of any of the other officers and directors of the said, The Canton State Bank, and thereby did defraud and injure the said The Canton State Bank as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that the said William L. Davis, Vice President and a Director of the said, The Canton State Bank as aforesaid, and Corwin D. Bachtel cashier and director of the said, The Canton State Bank as aforesaid, late of said County aforesaid, at the time and date aforesaid, and with the intent aforesaid, did willfully misapply certain property, to wit: certain certificates of Stock and being the same cerificates of Stock as described in the first count of this indictment, to wit: certain certificates for 350 shares of the capital stock of the said The Canton State Bank, to wit: Certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares, Certificate No. 244 for 40 shares, and Certificate No. 256 for 10 shares, to the use and benefit and benefit of the said William L. Davis without the assent of the said incorporated Company, the said, The Canton State Bank, and without the assent of any owner or owners
7 of said certificates, which said personal property had then and there come into the possession and care of the said William L. Davis and Corwin D. Bachtel by virtue of their employment as such officers aforesaid, of said incorporated Company, which said certificates of stock had theretofore been hypothecated by the said William L. Davis to the said The Canton State Bank, as security for money theretofore received by the said William L. Davis from the said, The Canton State Bank.

Third Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, and at the time and place aforesaid, do further find and present, that the said William L. Davis, Vice President and a director of The Canton State Bank as aforesaid, and Corwin D. Bachtel the cashier of — a director of The Canton State Bank as aforesaid, late of said county aforesaid at the time and date aforesaid, and with the intent aforesaid, did unlawfully and

fraudulently embezzle and convert to the use of said William L. Davis aforesaid, certain property, to wit: certain certificates for 350 shares of the capital stock of the said The Canton State Bank, and which are the same certificates of stock as described in the first and second count of this indictment, to-wit: certificate No. 20 for 100 shares, Certificate No. 181 for 100 shares, Certificate No. 223 for 100 shares, Certificate No. 244 for 40 shares, and Certificate No. 256 for 10 shares, without the assent of the said The Canton State Bank, their employer as aforesaid, and without the assent of any owner or owners of said personal property which said personal property had then and there come into the possession and care of the said William L. Davis and Corwin D. Bachtel by virtue of their employment as such officers as aforesaid, of said incorporated Company, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Abstraction, Misapplication and Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

8 I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 13th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

9 *Indictment for Willful Assignment of Bonds with Counts for Abstraction, Willful Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the au-

thority of the State of Ohio, do find — present: That Corwin D. Bachtel late of said County, on or about the 10th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, said Corwin D. Bachtel then and there being the cashier of and a director of a certain banking Company known as The Canton State Bank, a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking Company on or about March 10, 1905, and at the time of the assigning of the bonds and doing of the things hereinafter mentioned was doing a banking business at the city of Canton, Stark County, Ohio, as a free banking Company, with the intent then and there to injure and defraud said banking company, and with the intent to injure and defraud Austin C. Brant, William Wagner, William R. Zollinger and William H. Hoover, directors of said banking Company, without authority from the directors of said banking Company, *without authority from the directors of said banking Company* — assign to The Merchants National Bank of Massillon, Stark County, Ohio, certain bonds of said banking company of the value of Five thousand ($5000.00) dollars, and which bonds were numbered 15 and 16 respectively, and which bonds had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws of the State of Ohio, and hypothecated by the said The Cleveland Brick Co., with the said The Canton State Bank as security for moneys theretofore received by the said, The Cleveland Brick Co., from said The Canton State Bank and which bonds had come into his possession and under his control by virtue of his office as cashier of said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring at the time and place aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that William L. Davis, late of the county aforesaid, and at the time a director of said The Canton State Bank, before and at the time of said assignment of said bonds as aforesaid, by said Corwin D. Bachtel, March 18, 1906, and at the county aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, to assign said bonds in manner and form as aforesaid, well knowing that said Corwin D. Bachtel was the cashierof — a directorof the aforesaid banking Company, and that said banking Company was incorporated and organized under the aforesaid laws of the State of Ohio, and doing a banking business at said time in the city of Canton, Stark County, Ohio, under said free banking act.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and at the time and place aforesaid, and by the authority of the State of Ohio aforesaid, do further find and present, that said Corwin D. Bachtel cashier

and director of said, The Canton State Bank, as aforesaid, late of said county aforesaid, at the time and date aforesaid, and with the intent aforesaid, did willfully misapply certain bonds of said banking Company of the value of Five Thousand ($5000.00) dollars, which bonds were numbered 15 and 16 respectively, and had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws of the State of Ohio, and hypothecated by the said The Cleveland Brick Co., to the said The Canton State Bank, as securities for moneys theretofore re-
11 ceived by the said, The Cleveland Brick Co., from said The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, at the time and place aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present, that William L. Davis, late of said county aforesaid, and at the time a director of the said, The Canton State Bank, before and at the time of said willful misapplication of said bonds by said Corwin D. Bachtel as aforesaid, at the County aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, of The Canton State Bank to willfully misapply said bonds in the name and form as aforesaid, well knowing at the time that said Corwin D. Bachtel was the cashier and a director of said banking company, and that said banking Company was incorporated and organized under the free banking act of the laws of Ohio, and doing a banking business at the city of Canton, Stark County, Ohio, at said time.

Third Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, at the time and place aforesaid, do further find and present, that said Corwin D. Bachtel the cashier of and a director of The Canton State Bank as aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the county aforesaid, with the intent on the part of said Corwin D. Bachtel as aforesaid, did unlawfully and fraudulently abstract from the possession of the said The Canton State Bank certain bonds of said banking Company of the value of Five Thousand ($5000.00) dollars, which bonds were numbered 15 and 16 respectively, and which bonds had theretofore been issued by The Cleveland Brick Co., a corporation, duly incorporated and organized under the laws of the State of Ohio, and had theretofore been hypothecated by the said The Cleveland Brick Co., to the said The Canton State Bank as security for moneys theretofore received by the said The
12 Cleveland Brick Co., from The Canton State Bank. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, in the name and by the authority of the State of Ohio aforesaid, at the time and place aforesaid, do further find and present, that William L. Davis, late of said county aforesaid, and at the time a director of said The Canton State Bank as

aforesaid, at the County aforesaid, did feloniously, willfully, maliciously and fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid, to abstract said bonds in manner and form aforesaid, well knowing at the time that said Corwin D. Bachtel was cashier of said banking Company, and that said banking company was incorporated and organized under the free banking act of the State of Ohio, and was doing a banking business at the City of Canton, Stark County, Ohio.

Fourth Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, and in the name and by the authority of the State of Ohio aforesaid, on their oath aforesaid, and at the time and place aforesaid, do further find and present that said Corwin D. Bachtel cashier of The Canton State Bank aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the County aforesaid, with the intent aforesaid, did unlawfully and fraudulently embezzle and convert to his own use certain bonds of said banking company, which bonds were numbered 15 and 16 respectively, and had theretofore been issued by The Cleveland Brick Co., a corporation, incorporated and organized under the laws of The State of Ohio, and which bonds had theretofore been hypothecated by the said The Cleveland Brick Co., to the said, The Canton State Bank as security for moneys theretofore received by the said The Cleveland Brick Co., from said The Canton State Bank, and which bonds were then in the possession of and under and control of said Corwin D. Bachtel by virtue of his position and employment as cashier of said banking Company. And the Jurors of the Grand Jury aforesaid, on their oaths aforesaid, inquiring as aforesaid, and in the name and by the authority of the State of Ohio aforesaid, at the time and place aforesaid, do further find and present that William L. Davis late of the County aforesaid, and at the time a director of the said The Canton State Bank before and at the time of said embezzlement of said bonds by said Corwin D. Bachtel as aforesaid, at the County aforesaid, did feloniously, willfully, maliciously, fraudulently aid, abet, incite and procure the said Corwin D. Bachtel cashier as aforesaid of The Canton State Bank as aforesaid, to embezzle said bonds in manner and form aforesaid, well knowing at said time that said Corwin D. Bachtel was the cashier *of* a director of said The Canton State Bank, and that said The Canton State Bank was a corporation, incorporated and organized under the free banking act of the laws of the State of Ohio, and was doing a banking business in the city of Canton, Stark County, Ohio, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

18 .

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for willful assignment of bonds with counts for abstraction, willful misapplication and embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court, at Canton, Ohio, this 13th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

14 *Indictment for Misapplication and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and William L. Davis, late of said County on or about the 2nd day of May in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he the said William L. Davis, being then and there a vice president and a director of said banking company, and which banking company on or about May 2nd, 1905, and at the time of the misapplication of the money of said banking — as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said office as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 2nd day of May, 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank Twenty eight hundred and fifty seven and 15/100 dollars ($2857.15), which were then and there under their control, care and custody as cashier and a director respectively, to the use and

benefit of him the said William L. Davis, with intent to in-
15 jure and defraud the said The Canton State Bank of the same and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the county aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank, as aforesaid, did on or about the 2nd day of May, 1905, unlawfully, feloniously knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand eight hundred and fifty seven and 15/100 ($2857.15) dollars, and which sum of Two thousand eight hundred and fifty-seven and 15/100 ($2857.15) dollars, and which sum of two thousand eight hundred and fifty-seven and 15/100 ($2857.15) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care and custody as cashier and a director as aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel, cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said
16 office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for misapplication of money—count for embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

17 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and William L. Davis, late of said County, on or about the 15th day of December in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company, and which banking company on or about the 15th day of December, 1904, and at the time of the misapplication of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 15th day of Dec., 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank, to wit, the sum of Twenty four hundred and thirty two dollars ($2432), which were then and there under their control, care, custody as cashier and a director respectively, to the use and benefit of him the said William

L. Davis, with intent to injure and defraud the said The Can-
18 ton State Bank of the same, and which money had then and there been received into, and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank as aforesaid, did on or about the 15th day of December, 1904, unlawfully, feloniously, knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand four hundred and thirty-two ($2432.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care, custody as cashier and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis, director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of the said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of money—count for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

19 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court, at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

20 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark, and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel and William L. Davis, late of said County, on or about the 18th day of July in the year of our Lord one thousand nine hundred and four, at the County of Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company, and which banking company on or about the 18th day of July, 1904, and at the time of the misapplication of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virtue of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 18th day of July, 1905, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank, to wit, the sum of Two Thousand dollars ($3000) which were then and there under their control,
21 care and custody as cashier and a director respectively, to the use and benefit of him the said William L. Davis, with intent to injure and defraud the said The Canton State Bank of the same, and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, being then and there cashier and a director aforesaid, of the said The Canton State Bank as aforesaid, did on or about the 18th day of July, 1904, unlawfully, feloniously, knowingly and willfully embezzle of the moneys of the said The Canton State Bank, the sum of Two thousand ($2000.00) dollars, and which sum of Two thousand ($2000.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money was then and there under their control, care and custody as cashier and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis, director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, contrary to the Statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of
22 Money—Court for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand — the seal of said Court at Canton, Ohio, this 14th day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

23 *Indictment for Misapplication of Money and Embezzlement.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find present: That Corwin D. Bachtel and William L. Davis, late of said county, on or about the 16th day of December in the year of our Lord one thousand nine hundred and four, at the County of *of* Stark aforesaid, he the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and, he, the said William L. Davis, being then and there a vice president and a director of said banking company and which banking company on or about the 16th day of December, 1904, and at the time of the embezzlement of the money of said bank as hereinafter mentioned was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and the said Corwin D. Bachtel and William L. Davis by virture of their said offices as cashier and director respectively, of the said The Canton State Bank, at said time and place and being in said county of Stark and State of Ohio, on the 16th day of December, 1904, unlawfully, feloniously and knowingly did misapply the moneys of the said The Canton State Bank, to wit: Twenty one hundred and fifty dollars ($2150) which were then and there under their control, care and custody as cashier and a director respectively, to the use and benefit of him the said William L. Davis,
24 with intent to injure and defraud the said The Canton State Bank of the same, and which money had then and there been received into and then and there were in the possession of them the said Corwin D. Bachtel and William L. Davis by virtue of their said office and employment as cashier and as director respectively as aforesaid, of the said The Canton State Bank.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the county aforesaid, on their oaths aforesaid, and in the name and by the au-

thority of the State of Ohio aforesaid, do further find and present that the said Corwin D. Bachtel and William L. Davis aforesaid, late of the County aforesaid, at the time and date aforesaid, and at the county aforesaid, being then and there cashier and a director aforesaid of the said The Canton State Bank as aforesaid, did on or about the 16th day of December, 1904, unlawfully, feloniously, knowingly and willfully embezzle the moneys of the said The Canton State Bank, the sum of Two thousand one hundred and fifty ($2150.00) dollars, and which said sum of Two thousand one hundred and fifty ($2150.00) dollars, is the same sum, amount and money as referred to in the first count of this indictment, and which money as referred to in the first count of this indictment was, then and there under their control, care and custody as cashier, and a director aforesaid, by virtue of their said offices and with intent then and there on the part of them the said Corwin D. Bachtel as aforesaid, and William L. Davis, director as aforesaid, to convert the same to the use and benefit of him the said William L. Davis, with the intent on the part of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, to then and there and thereby injure and defraud the said The Canton State Bank, and which money had then and there been received into and was in the possession of them the said Corwin D. Bachtel cashier as aforesaid, and William L. Davis director as aforesaid, by virtue of their said office and employment as cashier and director respectively as aforesaid, of said The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

25 Endorsed as follows: Indictment for Misapplication of Money—Count for Embezzlement. A True Bill. Joseph Folk, Foreman of the Grand Jury.

Certificate.

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon now on file in my office.

Witness my hand — the seal of said court at Canton, Ohio, this 14th day of June 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

26 And thereupon at this same term and date, to wit:—

Journal B, Page 462.

Be it remembered that on this day, at the Court House, Court Room Number 2, at the City of Canton, in said County, R. Frank

Wilson, the sheriff of said county having now appeared with the body of said William L. Davis before the undersigned Judge of said Court in pursuance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said William L. Davis before the judges of our said Circuit Court, or any one of them, at the same place on Saturday the 16th day of June 1906, at nine o'clock A. M. unless the said William L. Davis shall enter into a recognizance to the State of Ohio, in due form to appear before said judges or any one of them at that time and place, and abide any order that may be made by them in the premises, in the sum of seven thousand dollars, with sureties to my acceptances and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, Ohio, June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon at this same term and date, to wit:—

Journal B, Page 463.

This day came William L. Davis and with Geo. W. Butler and Winfield S. Shertzer as his sureties entered into a recognizance before the Court in the sum of Seven Thousand Dollars ($7000.00), which recognizance reads and is in the words and figures following, to wit:

"Be it remembered that on the 11th day of June A. D. 1906 personally appeared before Thomas T. McCarty, one of the Judges of said Court and acknowledged themselves to owe to the State of Ohio, the penal sum of $7000.00 to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:—The condition of the above obligation is such that if the said William L. Davis shall appear before the Judges of said Circuit Court or any one of them on Saturday, June 16th, 1906 at
27 9 o'clock A. M. at the Court House in Court Room No. 2 in said County and abide the further order and judgment of said Judges or any one of them and not depart without leave, then this obligation to be void, otherwise to be in full force and effect.

WILLIAM L. DAVIS.
GEO. W. BUTLER.
WINFIELD S. SHERTZER.

Approved June 11th, 1906.

And afterwards on the 16th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, page 465.

This cause came on for hearing before Hon. Thos. T. McCarty one of the said Judges of said Circuit Court, upon the motion of

the defendant, William L. Davis, for a continuance upon consideration whereof the court continues this cause until Manday June 18th, 1906 at 8:30 o'clock A. M. at the Court House in Canton, Ohio. The bond given in this cause to remain in full force and effect.

And afterwards on the 18th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 469.

This cause came on to be heard at Chambers after the February Term 1906, to wit: On June 18th, 1906 before Honorable T. T. McCarty, one of the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant William L. Davis for a Writ of *Habeas Corpus* and upon the return and exhibits attached thereto of R. Frank Wilson as sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of counsel, said Judge finds that the said applicant William L. Davis was at the time of the filing of said applications in the custody of R. Frank Wilson as sheriff of Stark County, Ohio, by virtue of an order of Court of Common Pleas of said County for his detention and imprisonment in the jail of said County to await his trial upon indictments found and returned by the Grand Jury of said Stark County against the said William L. Davis charging him with having committed certain offenses set forth in said indictments contrary to Section 30 of an act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st, 1851, as the same was amended on April 24th, 1879, and now known as Section (3821-85) of the annotated statutes of Ohio. And the said Judge finds that said Section 30 of said Act is not in contravention of Article 1 of Sections 1 and 2, and of Article 2, Section 26 of the Constitution of Ohio and that it is not in contravention of the 14th Amendment of the Constitution of the United States as alleged by the said William L. Davis in his said application and the Court further finds that said William L. Davis is not and was not at the time of the filing of said application unlawfully detained by the respondent R. Frank Wilson as sheriff of said Stark County and that the application of said William L. Davis for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by said Judge that the application of the said William L. Davis for said Writ of *Habeas Corpus* be dismissed and that said William L. Davis be remanded to the custody of said R. Frank Wilson respondent as sheriff of Stark County, Ohio, and by virtue of said orders of the Court of Common Pleas to be by him held for trial under the indictments set up and referred to in these proceedings. It is further considered that the said William L. Davis pay the costs of these proceedings taxed at $—— and for which execution is awarded against him and to all of the findings, orders and judgment aforesaid, said William L. Davis now here excepts.

28

T. T. McCARTY.

Done at Canton, this 18th day of June A. D. 1906.

And afterwards on the 18th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following, to wit:—

29 *Mandate from Supreme Court Filed.*

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio of the Term of January, A. D., 1906, to wit, Monday, June 18th.

WILLIAM L. DAVIS
vs.
FRANK WILSON, Sheriff.

On motion of plaintiff in error, and for good cause shown, it is hereby ordered by the Court that the execution of the judgment therein be suspended upon plaintiff in error giving an undertaking in the sum of $7,000.00. subject to the approval of the Clerk of Courts of Stark County, Ohio, until the final determination of this action in this Court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Records of said Court, to wit: from Journal No. 21, page 130.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 18th day of June A. D. 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

And thereupon on this same day there was duly filed in the Clerk's Office of said Court a certain bond in this cause which bond reads and is in the words and figures following, to wit:

Bond Filed.

Recognizance for Suspension of Execution of Sentence.

In Supreme Court of Ohio.

THE STATE OF OHIO
vs.
WILLIAM L. DAVIS.

THE STATE OF OHIO, *Stark County, ss:*

Be it Remembered, that on the 18th day of June A. D. 1906 William L. Davis, Geo. W. Butler, Winfield S. Shertzer, his sureties

personally appeared before Jacob J. Wise, Clerk of Courts in and for the County aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following, to wit: The Condition of this Recognizance is such, that if the above bound William L. Davis shall personally be and appear before the Supreme Court of Ohio until the above case in error of said William L. Davis is determined, and abide the judgment or sentence of the Court, and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

WM. L. DAVIS.
GEO. W. BUTLER.
WINFIELD S. SHERTZER.

Taken and acknowledged in open Court on the day and year first above written.

JACOB J. WISE, *Clerk.*

And afterwards on the 2nd day of July A. D. 1906 there was duly filed in the Clerk's office of said Court a certain mandate from Supreme Court in this cause, which mandate reads and is in the words and figures following, to wit:

Mandate from Supreme Court Filed.

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to wit, Friday, June 29th.

WILLIAM L. DAVIS
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates' Annotated Statutes of Ohio; that said section of said statute was and is the only statute of law of the State of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of

said indictments to said Court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the Constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the
31 charge made in said indictments, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County, for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one, article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment of the Constitution of the United States or either of them; that in his petition in error to this Court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section (3821-85) of the Annotated
32 Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration whereof, it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment to the Constitution of the United States or either of them or for any of the reasons assigned in said petition in error, and

it is adjudged and ordered by this Court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court, be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered, That a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into Execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

Witness my hand and the seal of said Court, this twenty-fourth day of July A. D. 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

33 We do hereby command you, that you proceed, without delay to carry the within and foregoing judgment of our Supreme Court of Ohio, in the case of William L. Davis *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Lawson E. Emerson, Clerk of our said Supreme Court of Ohio, at Columbus, this 24th day of July, 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

34 STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 28 is a true copy of the Record in cause #719 and from page 29 to page 33 is a certified copy of the Mandates from the Supreme Court and the Supercedeas Bond filed in cause #719—In the matter of the Application of William L. Davis for Writ of *Habeas Corpus* as the same appears upon the Records of said court, and I further certify that I have carefully compared said foregoing copy with the original Record, and that the same is a full and correct transcript thereof.

Witness my hand and the seal of said Court, at Canton, Ohio, this 15 day of September A. D. 1906.

[Seal Court of Common Pleas, Stark County, Ohio.]

JACOB J. WISE, *Clerk.*

Endorsed on cover: File No. 20,414. Ohio supreme court. Term No. 449. William L. Davis, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,414.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 450.

CHARLES H. VAN HORN, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED OCTOBER 9, 1906.

(20,415.)

(20,415.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 450.

CHARLES H. VAN HORN, PLAINTIFF IN ERROR,

vs.

R. FRANK WILSON, SHERIFF OF STARK COUNTY, OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

INDEX.

	Original.	Print.
Certificate of the clerk of the supreme court of Ohio as to entry of judgment	*a*	1
Assignment of errors	*b*	1
Petition for writ of error	*e*	2
Order allowing writ of error	*f*	3
Bond on writ of error	*h*	3
Writ of error	*k*	5
Citation and service	*n*	6
Petition in error	*p*	6
Waiver of summons in error	*r*	8
Order staying judgment	*s*	8
Judgment	*t*	8
Docket entries	*w*	10
Clerk's certificate to record	*x*	10
Transcript from circuit court of Stark county	1	11
Caption	1	11
Petition for writ of *habeas corpus*	1	11
Order to issue writ of *habeas corpus*	2	12
Writ of *habeas corpus*	3	13
Sheriff's return	3	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1906.

	Original.	Print.
Exhibit A—Indictment for misapplication, &c.	5	14
Indictment for fraudulent issue, &c.	11	18
Indictment for false entries	14	20
Indictment for false entries	16	22
Indictment for false entries	18	23
Indictment for false entries	21	25
Indictment for false entries	23	27
Indictment for false entries	26	29
Indictment for false entries	28	30
Order postponing hearing and fixing bond	31	32
Recognizance	31	32
Order of continuance	32	33
Order dismissing application and remanding petitioner	32	33
Order of supreme court of Ohio suspending judgment	34	34
Recognizance to suspend judgment	34	35
Mandate from supreme court of Ohio	35	36
Clerk's certificate	39	38

a

Supreme Court of Ohio.

10213.

CHARLES H. VAN HORN, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark County.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that in the case pending in this court on a petition in error as No. 10213, wherein Charles H. Van Horn was plaintiff in Error, and Frank Wilson, Sheriff of Stark County, was defendant in error, a final judgment was rendered by the said Supreme Court of Ohio on the 29th day of June, A. D. 1906.

Witness my hand and seal of said Supreme Court at Columbus, Ohio, this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON,
Clerk of Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

b

Supreme Court of Ohio.

No. 10213.

CHARLES H. VAN HORN, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Assignment of Errors.

Now comes Charles H. Van Horn, plaintiff in error, and files the following assignment of errors, which, he alleges, intervened to his prejudice in the proceedings had, and the judgment rendered by the Supreme Court of Ohio on June 29, 1906, to which he duly excepted.

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an Act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United
c States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Charles H. Van Horn prays that the said judgment of the Supreme Court of Ohio, dated June 29, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

L. T. SIDDALL,
JOS. M. BLAKE,
WM. A. LYNCH,
Attorneys for Charles H. Van Horn, Plaintiff in Error.

d [Endorsed:] No. 10213. Supreme Court of Ohio. Charles H. Van Horn, Plaintiff in error, v. R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Assignment of errors. Filed Sep. 14, 1906, Supreme Court of Ohio. L. E. Emerson, Clerk. I. T. Siddall, Joseph M. Blake and Wm. A. Lynch, Attorneys for plaintiff in error.

e Supreme Court of Ohio.

No. 10213.

CHARLES H. VAN HORN, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition for Writ of Error.

Assignment of Errors and Prayer.

Considering himself aggrieved by the final decision of the Supreme Court of Ohio in rendering judgment against him in the above entitled case, the plaintiff in error, a citizen of the United States, born therein and a resident of the State of Ohio, hereby prays a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of a supersedeas bond.

And the said Charles H. Van Horn assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of

Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that it was repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a
f citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by being arrested and prosecuted under an indictment found and returned solely under favor of section 30 of the above recited act.

For which errors the plaintiff in error Charles H. Van Horn prays that the said judgment of the Supreme Court of Ohio dated June 26, 1906, be reversed and a judgment be rendered in favor of the plaintiff in error and for costs.

I. T. SIDDALL,
JOSEPH M. BLAKE,
WM. A. LYNCH,
Attorneys for Charles H. Van Horn, Plaintiff in Error...

STATE OF OHIO, *Supreme Court, ss:*

Writ of error allowed; and the said Charles H. Van Horn having presented a bond in the sum of seven thousand dollars which is approved by me, this allowance shall act as a supersedeas and stay of all further proceedings under said indictment until final judgment in the Supreme Court of the United States.

JOSEPH McKENNA,
Asso. Justice Supreme Court.

Sept. 21st, 1906.

g [Endorsed:] No. 10213. Supreme Court of Ohio. Charles H. Van Horn, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Petition for Writ of Error. Assignment of Errors and Prayer. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk. I. T. Siddall, Joseph M. Blake and Wm. A. Lynch, Attorneys for plaintiff in error.

h CHARLES H. VAN HORN, Plaintiff in Error,
v.
R. FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Bond.

Know all men by these presents, that we Charles H. Van Horn as principal and The Bankers' Surety Company, a corporation, as surety, are held and firmly bound unto R. Frank Wilson, Sheriff

of Stark County, Ohio, in the sum of Seven Thousand Dollars, to be paid to the said defendant in error, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Dated this 17th day of September, 1906.

Whereas, the above-named plaintiff in error seeks to prosecute his writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Ohio.

Now, therefore, the condition of this obligation is such, that if the above-named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, and abide by the order and judgment of the Supreme Court of the United States, then this obligation to be void, otherwise to remain in full force and effect.

This bond executed in duplicate, one only to be enforced.

CHARLES H. VAN HORN.

[Seal of the Bankers' Surety Company, Cleveland, Ohio.]

THE BANKERS' SURETY COMPANY,
HARVEY D. GOULDER, *President.*

Attest:
P. W. HARVEY, *Secretary.*

i STATE OF OHIO, *Cuyahoga County, ss:*

Harvey D. Goulder and P. W. Harvey, being each duly sworn on oath, depose and say; we are each of lawful age and Harvey D. Goulder is the President and P. W. Harvey is the Secretary of The Bankers' Surety Company, a corporation organized and existing under the laws of the State of Ohio, and authorized by the laws of said state to become surety upon bonds like the one above written, and for the purposes therein set forth; that we know the contents of the foregoing instrument and that the same has been duly executed by us, as the President and Secretary of the said The Bankers' Surety Company under its corporate seal by authority of its Board of Directors, and that said The Bankers' Surety Company is worth more than the sum of Seven Thousand Dollars over and above its debts and liabilities.

HARVEY D. GOULDER.
P. W. HARVEY.

Subscribed and sworn to before me, September 17, 1906.

[Notarial Seal, Cuyahoga County, Ohio.]

E. H. FISHMAN,
Notary Public, Cuyahoga County, Ohio.

Bond approved and to operate as a supersedeas and stay of proceedings.

JOSEPH McKENNA,
Asso. Justice Supreme Court U. S.

j [Endorsed:] No. 10213. Charles H. Van Horn, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Bond. Filed Oct. 4, 1906, Supreme Court of Ohio, L. E. Emerson, Clerk.

k *(Writ of Error.)*

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles H. Van Horn and R. Frank Wilson, Sheriff of Stark County, Ohio, wherein was drawn in question the validity of a statute of the State of Ohio, and an authority exercised under said statute, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of the said Charles H. Van Horn as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to cor-
l rect that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day September in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk Supreme Court U. S.

m [Endorsed:] No. 10213. Supreme Court of United States. Charles H. Van Horn, Plaintiff in error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in error. Writ of Error. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

n *(Citation.)*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to R. Frank Wilson, Sheriff of Stark County, Ohio, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Ohio, wherein Charles H. Van Horn is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the signature of the undersigned Associate Justice of the Supreme Court of the United States this 21st day of September, A. D. 1906.

JOSEPH McKENNA,
Associate Justice.

CANTON, OHIO, *September* 25, 1906.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

CHARLES C. UPHAM &
JOHN W. CRAINE,
Attorney- for R. Frank Wilson, Sheriff of Stark County, Ohio.

o [Endorsed:] No. 10213. Supreme Court of United States. Charles H. Van Horn, Plaintiff in Error, *v.* R. Frank Wilson, Sheriff of Stark County, Ohio, Defendant in Error. Citation. Filed Oct. 4, 1906. Supreme Court of Ohio. L. E. Emerson, Clerk.

p In the Supreme Court for the State of Ohio.

No. 10213.

CHARLES H. VAN HORN, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Ohio, Defendant in Error.

Petition in Error.

Plaintiff in error, Charles H. Van Horn states that in the vacation after the February Term, A. D. 1906, of the Circuit Court of Stark County, Ohio, to-wit: On May 24th, 1906, the plaintiff in error filed in the office of the Clerk of said Circuit Court, his petition for a Writ of *Habeas Corpus* and on that day applied to the Honorable Thomas

T. McCarty, one of the Judges of said Circuit Court for a Writ of *Habeas Corpus* to be issued to Frank Wilson, Sheriff of Stark County, Ohio, which Writ was thereupon on that day issued by order of said Judge, commanding said Frank Wilson Sheriff as aforesaid, to have the body of the petitioner before the Judges of said Circuit Court or any two of them on June 1st, 1906; that said Frank Wilson, Sheriff as aforesaid made due return of said Writ as will more fully appear by the transcript of said proceedings filed herein; that thereupon such proceedings were had under said Writ that in the vacation after said February term 1906, to-wit, on June 8th, 1906, the Judges of said Circuit Court rendered a judgment upon said application, writ and return, that said plaintiff in error, the petitioner therein, should be remanded to the custody of the defendant in error, Sheriff of said Stark County, Ohio, to be held by him in custody as he was held at the time of the issue of said writ of *habeas corpus* and that the plaintiff in error pay the costs of said proceedings taxed at
q $—. A full transcript of the final record of the proceedings had under said application and writ and a transcript of the docket and Journal Entries therein are filed herewith.

There is error in said record and proceedings in this, to-wit:

1st. That said Judges of said Circuit Court erred in holding that the Court of Common Pleas of said Stark County had jurisdiction of the person of the defendant at the time of the issuance of said writ.

2nd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio), was not void and invalid as in violation of the provisions of Article 1, Sections 1 and 2 of the Constitution of Ohio.

3rd. That said Judges erred in holding that Section 30 of the Act of March 21st, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of the provisions of Article 2, Section 26 of the Constitution of Ohio.

4th. That said Judges erred in holding that Section 30 of the Act of March 21, 1851, entitled "An Act to authorize free banking" as amended April 24, 1879, (Section- 3821-85 of the Annotated Statutes of Ohio) was not void and invalid as in violation of Section 1 of the 14th amendment of the Constitution of the United States.

5th. That said Judges erred in remanding the plaintiff in error to the custody of the Sheriff of said Stark County, Ohio, instead of ordering his discharge.

6th. And for other errors apparent on the face of the record.

r Plaintiff in error therefore prays that said judgment and order be reversed and that he be restored to all things he has lost by reason thereof.

I. T. SIDDALL AND
JOSEPH M. BLAKE,
Attorneys for Plaintiff in Error.

The Defendant in error hereby waives the issue, service and return of summons in error in the above case and hereby voluntarily enters his appearance herein.

June 16, 1906.

R. FRANK WILSON,
By CHARLES C. UPHAM &
JOHN W. CRAINE,
His Attorneys.

s In the Supreme Court of the State of Ohio.

10213.

CHARLES H. VAN HORN
vs.
FRANK WILSON, Sheriff.

Entry.

MONDAY, *June* 18, 1906.

On motion of plaintiff in error and for good cause shown it is hereby ordered by the court that the execution of the judgment herein be suspended upon plaintiff in error giving an undertaking in the sum of $7000.00 subject to the approval of the Clerk of Courts of Stark Co., Ohio, until the final determination of this action in this court.

t Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

THE STATE OF OHIO, *City of Columbus:*

10213.

CHARLES H. VAN HORN
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error, that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit: section thirty of an act of the General Assembly of the state entitled "an act to authorize free banking" passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates' Annotated Statutes of Ohio; that said section of

said statute was and is the only statute or law of the state of Ohio under which said indictments were or could be found returned or prosecuted; that upon the return of said indictments to said court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason among others that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the
u judges of the Circuit Court of the State of Ohio, in and for said Stark County for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of the said Court of Common Pleas made and issued under said indictments, and that said imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section 26 article two of the constitution of the State of Ohio, also section one of the fourteenth amendment of the constitution of the United States; that the judge of said Circuit Court petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one article one, section two, article one, section 26 article two of the constitution of the State of Ohio, or section one of the fourteenth amendment of the constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, — (3821-85) of the Annotated
v Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one and section 26 article two of the constitution of the state of Ohio and of section one of the fourteenth amendment of the constitution of the United States. Upon the hearing of this cause before this court the plaintiff in error contended that this statute was void and invalid for the reasons as aforesaid assigned. On consideration whereof it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one, article one, section two article one and section 26 article two of the constitution of the State of Ohio or section one of the fourteenth amendment to the constitution of the

United States or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this court that the judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—.

Ordered that a special mandate be sent to the judges of the Circuit Court of Stark County to carry this judgment into execution.

w Supreme Court of Ohio, January Term, 1906.

10213.

CHARLES H. VAN HORN, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff, Defendant in Error.

Error to Circuit Court of Stark County.

June 18. Petition in error, Waiver, Circuit Court Transcript filed.
18. Original papers filed.
18. Entry suspending judgment filed. Bond $7000.00. J. 21.
29. Judgment affirmed. J. 21, 174.
July 12. Original papers sent Clerk.
24. Mandate issued.
Sept. 14. Assignment of Errors filed.
Oct. 4. Petition *of* Writ of Errors filed.
4. Bond in duplicate filed.
4. Writ of Errors filed.
4. Citation on Writ, and entry of appearance filed.

x Supreme Court of Ohio.

10213.

CHARLES H. VAN HORN, Plaintiff in Error,
vs.
FRANK WILSON, Sheriff of Stark County, Defendant in Error.

Error to the Circuit Court of Stark Co.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a full and true transcript of the record of the pleadings, proceedings and final judgment and of the docket and journal entries in the above entitled case in said Supreme

Court. And that attached hereto is a full transcript of the record of the pleadings, proceedings and judgment in said Circuit Court of Stark County which was brought before our Supreme Court by petition in error filed in this case and upon which said Supreme Court rendered its said judgment, together with the mandates issued out of this Court to said Circuit Court to carry into effect the order of the supersedeas and the final judgment herein of said Supreme Court.

Witness my hand and the seal of the Supreme Court of Ohio this fourth day of October, A. D. 1906.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.*

1 At a term of the Circuit Court begun and held at the Court House in the City of Canton within and for the County of Stark, in the Fifth Judicial Circuit of the Circuit Court of the State of Ohio on the 18th day of June, in vacation after the February Term, A. D. 1906, by and before their honors, M. H. Donahue, T. T. McCarty and Frank Taggart, Judges of said Court, Judge M. H. Donahue, Presiding.

In the record of proceedings of said court then and there held among other things appears the following, to-wit:—

THE STATE OF OHIO, *Stark County, ss:*

In the Circuit Court.

Docket 2, Page 717.

In the Matter of the Application of CHARLES H. VAN HORN for Writ of *Habeas Corpus.*

Habeas Corpus.

Be it remembered that heretofore, to wit, on the 11th day of June in the year of our Lord nineteen hundred and six there was duly filed in the Clerk's office of said Circuit Court a certain petition in this cause, which petition reads and is in the words and figures following, to wit:—

Petition.

In the Circuit Court of the State of Ohio, Stark County, *ss:*

In the Matter of the Application of CHARLES H. VAN HORN for a Writ of *Habeas Corpus.*

The petitioner respectfully states that he is unlawfully restrained of his liberty by R. Frank Wilson, sheriff of said county, at the

county jail of said county. The pretended cause of said imprisonment is an order made by the Court of Common Pleas of said County, committing the petitioner to detention in the county jail of said county to await his trial in said court upon certain pretended indictments, numbered 2499, 2500, 2501, 2502, 2503, 2504, 2505,
2 2506 and 2507, which said pretended indictments were presented under and solely by virtue of a certain statute, to wit: section 30 of an act entitled "an act to authorize Free Banking" passed by the General Assembly of the State of Ohio, March 21, 1851, as amended April 24, 1879, (3821-85) of the Annotated Statutes of Ohio; that said statute is in contravention of the 14th amendment of the constitution of the United States and of article 1, sections 1 and 2 and article II, section 26 of the constitution of Ohio, is unconstitutional and void, and that said court was without jurisdiction, power or authority to issue said order and in law the same is void. Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, and that he may be discharged from such unlawful restraint and imprisonment.

CHARLES H. VAN HORN,
By I. T. SIDDALL &
JOS. M. BLAKE,
His Attorneys.

STATE OF OHIO, *Stark County, ss:*

Charles H. Van Horn being duly sworn says that he is the petitioner in this proceeding; that the facts stated and allegations contained in the foregoing petition are true as he verily believes.

CHARLES H. VAN HORN.

Sworn to by said Charles H. Van Horn before me and by him signed in my presence this 11th day of June, 1906.

JOSEPH M. BLAKE, [SEAL.]
Notary Public, Stark County, Ohio.

And afterwards on the 11th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to-wit:—

Journal B, Page 459.

Be it remembered that on this day, at the Court House at the city of Canton, in said county, came Charles H. Van Horn and his attorneys I. T. Siddall and Joseph M. Blake and submitted to the undersigned, one of the Judges of said Court his petition for a Writ of *Habeas Corpus,* which had been filed in the office of the Clerk of said Court, and said petition being heard it is now here ordered that the prayer of the petitioner for the issuance of said Writ be granted and that the Clerk of the Court shall issue the same to the sheriff of said county commanding him to have the body of said Charles H. Van

Horn before the undersigned at the Court House, Court Room Number 2 at one o'clock P. M. this day.

Done at Canton, June 11th, 1906.

T. T. McCARTY,

3 *Judge of the Circuit Court, Stark County, Ohio.*

And thereupon on this same day there was duly issued from the Clerk's office of said court a certain writ of *habeas corpus* in this cause which writ of *habeas corpus* reads and is in the words and figures following, to-wit:—

Writ of Habeas Corpus Issued.

THE STATE OF OHIO:

Circuit Court of Stark County.

To the Sheriff of Stark County, Greeting:

We command you that the body of Charles H. Van Horn, by you imprisoned and restrained of his liberty, as it is said you take and have before Thos. T. McCarty, a Judge of our Circuit Court, or in case of his absence or disability, before some other Judge of the same Court, at the Court House in said County, forthwith, to do and receive what said Judge shall then and there consider concerning him in his behalf; and summon the said sheriff of Stark County then and there to appear before said Judge to show the cause of the taking and detention of the said Charles H. Van Horn. Witness my signature and the seal of said court, at Canton, Ohio, this 11th day of June, A. D. 1906.

JACOB J. WISE,

[SEAL.] *Clerk of said Circuit Court.*

And thereupon on this same day the Sheriff of Stark County duly returned to the Clerk's office of said Court the foregoing writ of *habeas corpus* issued to said sheriff which return reads and is in the words and figures following, to wit:—

Writ of Habeas Corpus Returned.

Received this writ on the 11th day of June, 1906, and in pursuance of the command thereof, I hereby certify that the within named Charles H. Van Horn was taken into my custody on the 11th day of June, 1906, and is now detained by me, by virtue of an order of Hon. W. W. Hole, one of the Judges of the Court of Common Pleas of the First Subdivision of the 9th Judicial District of the State of Ohio and in Stark County, and by reason of this surrender of the said Charles H. Van Horn, by his sureties in open court on an indictment as hereinafter described of the said Court of Common Pleas

in Stark County, Ohio, on June 11, 1906. The said Charles
4 H. Van Horn having been heretofore indicted by the Grand Jury of Stark County, Ohio, for an offense under section 3821-85 of the Revised Statutes of the State of Ohio, and known as the free banking act, a copy of said indictments are hereto attached marked "Exhibit A" and made a part of this return, and I now have the body of the said Charles H. Van Horn before this Court as within commanded.

R. FRANK WILSON,
Sheriff of Stark County, Ohio.

5 *Indictment for Misapplication of Funds of the Canton State Bank, with Count for Misapplication of Credits.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find — present: That Charles H. Van Horn, late of said County, on the 4th day of January in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, being then and there the Teller and clerk of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and which banking company on or about the fourth day of January, 1905, and at the time of the willful misapplication of the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the City of Canton, Stark County, Ohio, as a free banking company, and the said Charles H. Van Horn having by virtue of his said office, a partial superintendence of the affairs of the said The Canton State Bank, at said time and place and being in said County of Stark and State of Ohio, and on the 4th day of January, 1905, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said The Canton State Bank, which were then and there under his control, care and custody as teller and clerk aforesaid, by virtue of his said office, with intent then and there on the part of him the said Charles H. Van

Horn, teller and clerk aforesaid, to convert the same to the
6 use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit: in the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of the said Charles H. Van Horn, teller and clerk as aforesaid, to then and there and thereby injure and defraud *to* said The Canton State Bank, the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, to the use and benefit of the said The Miller Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

At sight, Pay to the order of C. D. Bachtel, Cas. Three thousand dollars, Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft was then and there, when so cashed, a worthless unsecured, false and fictitious draft and obligation, which had been drawn by the said The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon The Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Company, nor was there any consideration of any kind or value moving from the said The Miller Company, to The Mansfield Oil Co., nor to any other person, for the acceptance of the said draft, but the same was false, fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn, teller and clerk as aforesaid; the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn, teller and clerk as aforesaid, was then and there made from and by the use of
said moneys, funds and credits of the said The Canton State
7 Bank, by the said Charles H. Van Horn teller and clerk as aforesaid, by virtue of his said office, then and there cashing the draft, and then and there giving and causing to be given by the cashing of said draft to H. H. Miller. Tr., who is the said Harvey H. Miller, of The Miller Co., the sum of Three thousand ($3000.00) dollars, and the said sum of money was thereby withdrawn from the moneys, funds and credits of The Canton State Bank, and paid out by the said Charles H. Van Horn, Teller and clerk as aforesaid, of the said The Canton State Bank, from the funds and moneys of the said The Canton State Bank, to and for the use and benefit and upon the order of the said The Miller Co., in due course of business whereby the said sum of Three thousand ($3,000.00) dollars, became converted to the use and benefit of the said The Miller Co., and lost to the said The Canton State Bank, and the Jurors of the Grand Jury aforesaid, do further find and present that Harvey H. Miller

late of said county of Stark and State of Ohio, in the County and State aforesaid, at the time aforesaid, and before said misapplication of said monies and funds aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud the said The Canton State Bank as aforesaid, on or about the 4th day of January, 1905, aid, abet, incite and procure the said Charles H. Van Horn, teller and clerk as aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said, The Canton State Bank, to wit:—the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there knowing the said Charles H. Van Horn to be then and there the teller and clerk of The Canton State Bank, as aforesaid.

Second Count.

And the Jurors of the Grand Jury aforesaid, in and for the County aforesaid, on their oaths aforesaid, and in the name and by the authority of the State of Ohio, aforesaid, do further find and present that the said Charles H. Van Horn aforesaid, late of the county
8 aforesaid, at the time and date aforesaid, and at the County aforesaid, being then and there the teller and clerk of a certain banking company, then and there known and designated as The Canton State Bank, which said The Canton State Bank was a corporation, duly organized and incorporated under the law of the State of Ohio, known as and being the free banking act of 1851, and which banking Company, on or about January 4th, 1905, and at the time of willfully misapplying the moneys, funds and credits of said bank as hereinafter mentioned, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company, and the said Charles H. Van Horn having by virtue of his said office as teller and clerk a partial superintendence of the affairs of said bank, unlawfully, feloniously, knowingly and willfully did misapply the moneys, funds and credits of the said, The Canton State Bank, which were then and there under his control, care and custody as teller and clerk as aforesaid, by virtue of his said office with intent then and there on the part of him the said Charles H. Van Horn, teller and clerk as aforesaid, to convert the same to the use and benefit of The Miller Company, a corporation of Canton, Ohio, in a large sum, to wit:—the sum of Three thousand ($3000.00) dollars, and with the further intent on the part of him the said Charles H. Van Horn teller and clerk as aforesaid, to then and there and thereby injure and defraud the said, The Canton State Bank; the said Charles H. Van Horn, teller and clerk as aforesaid, then and there willfully misapplying the said moneys, funds and credits of the said banking Company, by then and there cashing a certain draft, which said draft, when so cashed, was in the words and figures following, to wit:—

$3000.00. 1/4, 1905.

Three thousand dollars. Value received and charge the same to account of

THE MILLER CO.
H. H. MILLER, *Tr.*

To Mansfield Linseed Oil Co., Mansfield, O.

which said draft is the same draft as described and referred to in the first count in this indictment, which said draft was then and there, when so cashed, a worthless, unsecured, false and fictitious draft and obligation, which had been drawn by the said, The Miller Company, per H. H. Miller, Tr., which said H. H. Miller was Harvey H. Miller, upon the Mansfield Linseed Oil Co., at a time when the said Mansfield Linseed Oil Co., was not indebted in the sum of Three thousand ($3000.00) dollars, nor in any other sum approximating Three thousand ($3000.00) dollars, to the said The Miller Co., all of which was well known to the said Charles H. Van Horn teller and clerk as aforesaid, of The Canton State Bank, as aforesaid, at the time he cashed said draft aforesaid, nor was there any consideration of any kind or value moving from the said, The Miller Co., to The Mansfield Oil Co., nor to any other person for the acceptance of said draft, but the same was false fraudulent and unauthorized, all of which was at the time well known by the said Charles H. Van Horn teller and clerk as aforesaid, at the time he cashed said draft as aforesaid, the said cashing of the said draft so made as aforesaid, by the said Charles H. Van Horn teller and clerk as aforesaid, by virture of his said office, then and there cashing the draft and then and there giving and causing to be given by the cashing of said draft credit upon the books of the said The Canton State Bank, to the account of the said, The Miller Co., in the sum of Three thousand ($3000.00) dollars, which said credit was afterwards used by the said, The Miller Co., and the moneys, funds and credits of The Canton State Bank, and paid out by the said The Canton State Bank, to and for the use and benefit and upon the order of the said, The Miller Co., in due course of business whereby the said sum of Three thousand ($3000.00) dollars, became converted to the use and benefit of the said, The Miller Co., and lost to the said The Canton State Bank, and the Grand Jurors aforesaid, do further find and present that Harvey H. Miller, late of the County of Stark, in the State of Ohio, aforesaid did unlawfully, willfully, knowingly, feloniously and with intent to injure and defraud The Canton State Bank as aforesaid, on or about January 4th, 1905, aid, abet, incite and procure the said Charles H. Van Horn teller and clerk aforesaid, to wrongfully, unlawfully, knowingly, feloniously and willfully misapply as aforesaid, the moneys, funds and credits of the said The Canton State Bank, to wit: the sum of Three thousand ($3000.00) dollars, as aforesaid, he, the said Harvey H. Miller, then and there well knowing the said Charles H. Van Horn to be then and there teller and clerk of the said The Canton State Bank as aforesaid, contrary to the statute in such case made

and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Misapplication of Funds of The Canton State Bank and Count for Misapplication of Credits. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said court at Canton, Ohio, this 13th day of June 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

11 *Indictment for Fraudulent Issue of Certificate of Deposit.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of *Stark* in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Charles H. Van Horn late of said County, on the 18th day of November, in the year our Lord one thousand nine hundred and four, at the County of Stark aforesaid, he the said Charles H. Van Horn, then and there being the teller and a clerk of a certain banking Company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as the free banking act of 1851, and found in the Revisied Statutes of Ohio,, and which said banking Company on or about the 18th day of November, 1904, and at the time of the issuance of the certificate of deposit as hereinafter described was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking Company; and he, the said Charles H. Van Horn, being then and there entrusted by and on behalf of the said The Canton State Bank with the safe keeping of

the moneys, *of the said The Canton State Bank with the safe keeping of the moneys,* funds and credits of said Company, did then and there feloniously, knowingly, wilfully and fraudulently without authority from the directors of the said, The Canton State Bank, issue a certificate of deposit to one Warren H. Walter with intent then and there on the part of him the said Charles H. Van Horn, to injure and defraud the said, The Canton State Bank, which said certificate of deposit was in the words and figures following to wit:—

12 The Canton State Bank.

No. 5074.

CANTON, O., 11/18, 1904.

$1200.00 Certificate of Deposit.

W. H. Walter has deposited in this bank Twelve hundred ($1200.00) payable to order of self on the return of this certificate properly endorsed.

C. D. BACHTEL, *Cashier.*

Paid Nov. 19, 1904.

THE CANTON STATE BANK,
CANTON, OHIO.

Endorsed: W. H. Walter, The Miller Co., per H. H. Miller, Treas. D.

which certificate of deposit was then and there on Nov. 19th, 1904, cashed and paid out of the moneys, funds and credits of said The Canton State Bank, in the amount aforesaid, and — which said sum and amount aforesaid, no part thereof was the said Warren H. Walter or The Miller Co., per H. H. Miller, Treasurer., entitled to withdraw from said bank for the reasons that the said Warren H. Walter had then and there no funds in the said The Canton State Bank, and had not deposited in said bank on November 18, 1904, or at any time prior thereto, the said sum of Twelve Hundred ($1200.00) dollars, nor any part of the same to the said Charles H. Van Horn, at neither prior to nor at the time the said Charles H. Van Horn issued the said certificate of deposit to the said Warren H. Walter, all of which, he the said Charles H. Van Horn then and there well knew, and the Jurors of the Grand Jury aforesaid, upon their oaths aforesaid, do further find and present that Warren H. Walter and Harvey H. Miller, late of the county aforesaid, before the said unlawful, fraudulent, felonious, and willful issuance of said certificate of deposit to the said Warren H. Walter as aforesaid, by the said Charles H. Van Horn, at the time and date aforesaid, did unlawfully, willfully, knowingly and feloniously and with the intent to injure and defraud the said The Canton State Bank, aid, abet, incite and procure the said Charles H. Van Horn, teller and clerk as aforesaid, of The Canton State Bank as aforesaid, the unlawful, fraudulent, willful and felonious issuance of said certificate of deposit to the said Warren H. Walter as aforesaid, in the manner and form as aforesaid, to do and commit as aforesaid, they the said Warren H. Walter and Har-

vey H. *Walter and Harvey H.* Miller then and there know-
13 ing that the said Charles H. Van Horn, to be then and there the teller and clerk of the said, The Canton State Bank as aforesaid contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Fraudulent issue of certificate of deposit. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

14 Indictment for false entry in book of bank, to-wit:—

Journal No. 2.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the Year of Our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said county, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851 and found in Revised Statutes of Ohio, and, he the said Charles H. Van Horn

being then and there the teller and a clerk of the said banking company and which banking Company on or about March 9, 1905, and at the time of grievances hereinafter complained of, was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said offices and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking Company with a certain book, to wit: "Journal No. 2." pertaining to the transaction of the business of said banking company, which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as such cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did write and make without the authority from the directors of the said banking company, The Canton State Bank, a false entry therein, on Page 334 under the head of Friday and at the end of line in which *have* written, loans and discounts Sunds., the figure 6 in front of the figures 1592.25, thereby making it appear that the loans and discounts sundries were 61592.25 instead of 1592.25 as it was originally in said book which said entry was false and known to be false to the said Corwin D. Bachtel and Charles H. Van Horn, cashier, teller and clerk as aforesaid, at the time they made the same and it was made without the authority from the directors of the said banking company, The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C Brant the president of the Banking Co. and William Wagner, and William R. Zollinger directors of the said The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entry in Book of Bank, to wit: Journal No. 2. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court, at Canton, Ohio, this 13" day of June 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

16 Indictment for making false entries in book of bank, to wit:

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn late of said County on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back, The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said book was then and there in charge and under the control of them the said Corwin
17 D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employ-

ment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of
March 3, 1905, which was as follows:

"	3	58½	Clevd. Brick Co.	90 dys.	"	3 "
"	1	5000.				

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars for The Clev'd Brick Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note, and that said entry was false at the time they made the same, and said entry was so falsely made contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

18 Indictment for making false entries in book of bank, to-wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to in-

quire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find — present: The Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the
19 discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without the authority of the directors of the said banking company, The Canton State Bank, a false entry therein under date of
March 3, 1905, which was as follows:

" 3 54½ Davis Ry. Coal Co. 3 " 3.
June 3 5000.

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars, for The Davis Ry. Coal Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said, The Davis Ry. Coal Co., and that said entry was false at the time they made the same, and said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner

and William R. Zollinger directors of the said, The Canton State Bank, contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False entries in Book of Bank, to wit:—Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

20 I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and seal of said Court at Canton, Ohio, this 13" day of June 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

21 Indictment for making false entries in book of bank, to wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find — present: That Corwin D. Bachtel and Charles H. Van Horn late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said

banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904) pertaining to the transaction of the business of said banking company, and which said book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid,
22 in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State bank, a false entry therein, under date of March 3, 1905, which was as follows:

Mch. 3 5½ Davis. Ry. Coal Co. 4 mos. " 3.
July 3 5000

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Five thousand ($5000.00) dollars, for The Davis Ry. Coal Co., which entry was falsely made at the time by the said The Canton State Bank, and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said The Davis. Ry. Coal Co. and at the time they made the same, said entry was so falsely made without the authority from the directors of the said banking Company, The Canton State Bank as aforesaid, and with the intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit:—Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

23 Indictment for making false entries in book of bank, to wit:

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find — present: That Corwin D. Bachtel and Charles H. Van Horn, late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904), pertaining to the transaction of the

business of said banking company, and which said book was
24 then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, did knowingly and unlawfully write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of
March 3, 1905, which was as follows:

" 3 59¼ Citz. Heat L. & P. Co. 4 Mos. " 3
July 3 6000.

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Six thousand ($6000.00) dollars for The Citizens Heat, L. & P. Co., which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note, and that said entry was false at the time they made the same, and said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

25 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

26 *Indictment for Making False Entries on Books of Bank.*

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May, in the Year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and C. H. Van Horn, known as Howard Van Horn late of said County, on or about the 4th day of January in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid said Corwin D. Bachtel then and there being the cashier of and said Charles Howard Van Horn then and there being the teller and bookkeeper of a certain Banking Company known as TheCanton State Bank; a corporation duly incorporated and organized under the law of the State of Ohio, known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and the making of the entry hereinafter mentioned was doing a banking business at the City of Canton, Stark County, Ohio, as a free banking Company, with intent then and there to injure and defraud said banking Company and Austin C. Brant, William Wagner, William R. Zollinger and W. H. Hoover directors of the same, and with intent to deceive the president and members of the board of directors of said Banking Company, did then and there, without authority from the directors of said banking company, willfully, unlawfully, knowingly and intentionally make the following false entry on Page 294 in a book of said banking company known and designated as "Journal No. 2" under date of January 4, 1905, to wit: "Bank of Pittsburg N. A. 445.67 595 3000–4040.67," thereby charging said Bank
of Pittsburg N. A. with the sum of Four Thousand Forty Dol-
27 lars and Sixty-seven cents ($4040.67) and thereby making said book to show that said Bank of Pittsburg N. A. had received a deposit to the credit of said The Canton State Bank of Canton, Ohio, in the sum of Four Thousand Forty Dollars and Sixty-seven Cents ($4040.67) on said January 4, 1905, whereas in truth and in fact said entry should have been made as follows: "Bank of Pittsburg N. A. 445.67 595–1040.67, and whereas in truth and in fact said Bank of Pittsburg N. A. should only have been charged with having received the sum of One Thousand Forty Dollars and Sixty-seven Cents (1040.67) on said January 4, 1905, and whereas in truth and in fact said Bank of Pittsburg N. A. only received on de-

posit to the credit of said The Canton State Bank of Canton, Ohio, the sum of One Thousand Forty Dollars and Sixty-seven Cents ($1040.67) on said January 4th, 1905, all of which was fully known by said Corwin D. Bachtel and Charles Howard Van Horn at the time of making said entry contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries January 4th, 1905. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(*Certificate.*)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now in file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 13" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

28 Indictment for making false entries in book of bank, to wit:—

Discount Register.

Revised Statutes, Secs. 7193-4, 7206-7-10-15.

(Felony.)

THE STATE OF OHIO, *Stark County, ss:*

In the Court of Common Pleas, Stark County, Ohio, of the Term of May in the year of our Lord One Thousand Nine Hundred and Six.

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find, present: That Corwin D. Bachtel and Charles H. Van Horn, late of said County, on or about the 9th day of March in the year of our Lord one thousand nine hundred and five, at the County of Stark aforesaid, he, the said Corwin D. Bachtel being then and there the cashier and a director of a certain banking company known as The Canton State Bank, a corporation, duly incorporated and organized under the law of the

State of Ohio, and known as and being the free banking act of 1851, and found in the Revised Statutes of Ohio, and he, the said Charles H. Van Horn being then and there the teller and a clerk of the said banking company and which banking company on or about March 9th, 1905, at the time of the grievances hereinafter complained of was doing a banking business in the city of Canton, Stark County, Ohio, as a free banking company, and they the said Corwin D. Bachtel and Charles H. Van Horn by virtue of their said office and employment as such cashier, teller and clerk respectively, were entrusted by and on behalf of said banking company with a certain book, to wit: "Discount Register" (which discount register was also labeled on its back The Canton State Bank, and the first entry in said register was made August 14, 1904), pertaining to the transaction of the business of said banking company, and which said
29 book was then and there in charge and under the control of them the said Corwin D. Bachtel and Charles H. Van Horn, for use in the discharge of their duties as cashier, teller and clerk aforesaid, in the making of correct entries and keeping a correct record of the transaction of the said bank, and which the said Corwin D. Bachtel and Charles H. Van Horn then and there having possession of said book as aforesaid, for the purpose aforesaid, and by virtue of their employment aforesaid, in said county of Stark and State of Ohio, knowingly and unlawfully did write and make without authority of the directors of the said banking company, The Canton State Bank, a false entry therein, under date of March 3, 1905, which was as follows:

"	3,	561/2	W. L. Davis	4	"	"	3
July	3,	3500.					

thereby making said entry show that on said March 3, 1905, that said bank had discounted a note amounting to Three thousand five hundred ($3500.00) dollars for W. L. Davis, which entry was falsely made at the time by the said Corwin D. Bachtel and Charles H. Van Horn cashier, teller and clerk as aforesaid, at the time knowing that said bank on said day, had not discounted said note for the said W. L. Davis, and that said entry was false at the time they made the same, said entry was so falsely made without the authority from the directors of the said banking Company The Canton State Bank as aforesaid, and with the intent to then and there injure and defraud said banking company, The Canton State Bank, and with the further intent to then and there deceive Austin C. Brant the president of the said banking Company and William Wagner and William R. Zollinger directors of the said, The Canton State Bank contrary to the statute in such case made and provided and against the peace and dignity of the State of Ohio.

CHARLES C. UPHAM,
Prosecuting Attorney.

Endorsed as follows: Indictment for Making False Entries
30 in Book of Bank, to wit: Discount Register. A True Bill. Joseph Folk, Foreman of the Grand Jury.

(Certificate.)

THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Court of Common Pleas, in and for said County, do hereby certify that the within and foregoing is a full, true and correct copy of the original indictment, together with the endorsements thereon, now on file in my office.

Witness my hand and the seal of said Court at Canton, Ohio, this 12" day of June, 1906.

JACOB J. WISE, *Clerk.* [SEAL.]

31 And thereupon at this same term and date, to wit:—

Journal B, Page 459.

Be it remembered that on this day, at the Court House, Court Room Number 2, at the city of Canton, in said county, R. Frank Wilson, the sheriff of said county having now appeared with the body of said Charles H. Van Horn before the undersigned judge of said court in pursuance of the writ of *habeas corpus* issued in the above entitled proceeding, it is ordered that said sheriff shall have the body of said Charles H. Van Horn before the judges of our said Circuit Court, or any one of them, at the same place on Saturday the 16th day of June, 1906, at 9 o'clock A. M. unless the said Charles H. Van Horn shall enter into a recognizance to the State of Ohio, in due form to appear *enter into a recognizance to the State of Ohio, in due form to appear* before said judges or any one of them at that time and place, and abide any order that may be made by them in the premises, in the sum of seven thousand dollars, with sureties to my acceptance and it is further ordered that at said time and place above fixed said sheriff shall make full return to said writ.

Done at Canton, Ohio, June 11th, 1906.

T. T. McCARTY,
Judge of the Circuit Court, Stark County, Ohio.

And thereupon at this same term and date, to-wit:—

Journal B, Page 460.

This day came Charles H. Van Horn and with Frank B. Niesz and W. H. Cavnah as his sureties entered into a recogni-ance before the Court in the sum of Seven Thousand Dollars ($7000.00) which recognizance reads and is in the words and figures following, to wit:

"Be it remembered that on the 11" day of June, A. D. 1906, personally appeared before Thomas T. McCarty, one of the Judges of said Court and acknowledged themselves to owe to the State of Ohio the penal sum of $7000.00 to be levied on their goods and chattels, lands and tenements, if default be made in the condition following,

to wit: The condition of the above obligation is such that if
32 the said Charles H. Van Horn shall appear before the Judges of said Circuit Court or any one of them on Saturday, June 16", 1906, at 9 o'clock A. M. at the Court House in Court Room No. 2 in said County and abide the further order and judgment of said Judges or any one of them and not depart without leave, then this obligation to be void, otherwise to be in full force and effect.

CHARLES H. VAN HORN.
FRANK B. NIESZ.
W. H. CAVNAH.

Approved June 11", 1906.

JACOB J. WISE, *Clerk.*"

And afterwards on the 16th day of June A. D. 1906 during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 464.

This cause came on for hearing before Hon. Thos. T. McCarty, one of the said Judges of said Circuit Court upon the motion of the defendant, Charles H. Van Horn, for a continuance upon consideration whereof the court continues this cause until Monday, June 18th, 1906, at 8:30 o'clock A. M. at the Court House, in Canton, Ohio. The bond given in this cause to remain in full force and effect.

And afterwards on the 18th day of June, A. D. 1906, during vacation after the February Term of the said Circuit Court at Chambers, to wit:—

Journal B, Page 466.

This cause came on to be heard at Chambers after the February Term 1906, to-wit:—On June 18th, 1906 before Honorable T. T. McCarty, one of the Judges of the Circuit Court of Stark County, Ohio, on the petition and exhibits attached thereto of the applicant Charles H. Van Horn for a Writ of *Habeas Corpus* and upon the return and exhibits attached thereto of R. Frank Wilson as sheriff of Stark County, Ohio; and the same having been heard upon said pleadings, exhibits and arguments of counsel, said Judge finds that the said applicant Charles H. Van Horn was at the time of the filing of said applications in the custody of R. Frank Wilson as Sheriff of Stark County, Ohio, by virtue of an order of Court of Common Pleas of said County for his detention and imprisonment
33 in the jail of said County to await his trial upon indictments found and returned by the Grand Jury of said Stark County against the said Charles H. Van Horn charging him with having committed certain offenses set forth in said indictments contrary to Section 30 of an act entitled "An Act to authorize Free Banking," passed by the General Assembly of the State of Ohio on March 21st,

1851, as the same was amended on April 24th, 1879, and now known as Section (3821-85) of the annotated statutes of Ohio. And the said Judge finds that said Section 30 of said Act is not in contravention of Article 1 of Sections 1 and 2 and of Article 2, Section 26 of the Constitution of Ohio and that it is not in contravention of the 14th Amendment of the Constitution of the United States as alleged by the said Charles H. Van Horn in his said application and the Court further finds that said Charles H. Van Horn is not and was not at the time of the filing of said application unlawfully detained by the respondent R. Frank Wilson as sheriff of said Stark County and that the application of said Charles H. Van Horn for a Writ of *Habeas Corpus* should be dismissed. It is therefore ordered, considered and adjudged by said Judge that the application of the said Charles H. Van Horn for said Writ of *Habeas Corpus* be dismissed and that said Charles H. Van Horn be remanded to the custody of said R. Frank Wilson respondent as sheriff of Stark County, Ohio, and by virtue of said orders of the Court of Common Pleas to be by him held for trial under the indictments set up and referred to in these proceedings. It is further considered that the said Charles H. Van Horn pay the costs of these proceedings taxed at $— and for which execution is awarded against him and to all of the findings, orders and judgment aforesaid, and Charles H. Van Horn now here excepts.

Done at Canton, this 18th day of June A. D. 1906.

T. T. McCARTY.

And afterwards on the 18th day of June A. D. 1906 there was duly filed in the Clerk's office of said Court a certain Mandate from Supreme Court in this cause which Mandate reads and is in the words and figures following to-wit:—

34 *Mandate from Supreme Court Filed.*

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio of the Term of January, A. D. 1906, to-wit, Monday, June 18th.

CHARLES H. VAN HORN
vs.
FRANK WILSON, Sheriff.

On motion of plaintiff in error and for good cause shown, it is hereby ordered by the Court that the execution of the judgment therein be suspended upon plaintiff in error giving an undertaking in the sum of $7,000.00, subject to the approval of the Clerk of Courts of Stark County, Ohio, until the final determination of this action in this Court.

I, Lawson E. Emerson, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing Entry is truly taken

and correctly copied from the Records of said Court, to wit: from Journal No. 21, page 130.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 18th day of June, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

And thereupon on this same day there was duly filed in the Clerk's office of said Court a certain bond in this cause which bond reads and is in the words and figures following to-wit:

Bond Filed.

Recognizance for Suspension of Execution of Sentence.

In Supreme Court of Ohio.

THE STATE OF OHIO
vs.
CHARLES H. VAN HORN.

THE STATE OF OHIO, *Stark County, ss:*

Be it remembered, That on the 18th day of June A. D. 1906, Charles H. Van Horn appeared before Jacob J. Wise, Clerk of Courts in and for the County of Stark aforesaid, and jointly and severally acknowledged themselves to owe the State of Ohio the sum of Seven Thousand Dollars, to be levied of their respective goods and chattels, lands and tenements, if default be made in the condition following, to wit: The Condition of this Recognizance is such, that if the above bound Charles H. Van Horn shall personally be and appear
35 before the Supreme Court of Ohio until the above case in error of said Charles H. Van Horn is determined, and abide the judgment or sentence of the Court, and not depart without leave, then this Recognizance shall be void; otherwise it shall be and remain in full force and virtue in law.

CHARLES H. VAN HORN.
W. H. CAVNAH.

Taken and acknowledged in open court on the day and year first above written.

JACOB J. WISE, *Clerk*.

And afterwards on the 2nd day of July A. D. 1906 there was duly filed in the Clerk's office of said court a certain mandate from Supreme Court in this cause, which mandate reads and is in the words and figures following to-wit:—

Mandate from Supreme Court Filed.

STATE OF OHIO, *City of Columbus:*

Supreme Court of the State of Ohio, January Term, A. D. 1906, to-wit, Friday, June 29th.

CHARLES H. VAN HORN
vs.
FRANK WILSON, Sheriff.

Error to the Circuit Court of Stark County.

This cause came on to be heard upon the petition in error and was argued by counsel, of the respective parties. The Court find from the record of the Circuit Court brought before it by said petition in error that the plaintiff in error was indicted by a grand jury of the Court of Common Pleas of Stark County, Ohio, charging him with the commission of an offense contrary to the provisions of a statute of the State of Ohio, to-wit:—section thirty of an act of the General Assembly of the State entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879 (3821-85) Bates' Annotated Statutes of Ohio; that said section of said statute was and is the only statute or law of the State of Ohio under which said indictments were or could be found, returned or prosecuted; that upon the return of said indictments to said Court of Common Pleas the plaintiff in error demurred to said indictments upon the ground that said statute, section thirty aforesaid, was unconstitutional and that said statute and indictments were void for the reason, among others, that they were repugnant to and contravened the provisions of section one of the fourteenth amendment of the Constitution of the United States and that therefore said Court of Common Pleas was without jurisdiction in law over the plaintiff in error, or in respect of the charge made in said indictments, which demurrer was by said Court of Common Pleas heard and overruled; that the plaintiff in error thereafter petitioned one of the judges of the Circuit Court of the State of Ohio, in and for said Stark County, for a writ of *habeas corpus* alleging in his said petition that he was unlawfully imprisoned and deprived of his liberty by the defendant in error by virtue of the order and writ of said Court of Common Pleas made and issued under said indictments, and that said
36 imprisonment was without legal warrant because said Court of Common Pleas was without jurisdiction for the reason that said statute and indictments were void because they were repugnant to section one article one, section two article one, and section twenty six article two of the Constitution of the State of Ohio, also section one of the fourteenth amendment of the Constitution of the United States; that the judge of said Circuit Court, petitioned as aforesaid, caused said writ of *habeas corpus* to issue to the defendant in error returnable to the three judges of said Circuit

Court or any two of them; that upon the return of said writ the plaintiff in error contended at the hearing before the judges of said Circuit Court to whom said return was made that said statute and indictments were void for the reasons aforesaid, but said judges overruled said contention and adjudged that said statute and indictments were not repugnant to said section one, article one, section two article one, section twenty-six article two of the Constitution of the State of Ohio or section one of the fourteenth amendment of the Constitution of the United States or either of them; that in his petition in error to this court the plaintiff in error assigned as error in the judgment of the judges of said Circuit Court, that said judges erred in holding that section 30 of the act of March 21, 1851, entitled "an act to authorize free banking" as amended April 24, 1879, section (3821-85) of the Annotated Statutes of Ohio, was not void and invalid as in violation of section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio and of section one of the fourteenth amendment of the Constitution of the United States. Upon the hearing of this cause before this Court the plaintiff in error contended that said statute was void and invalid for the reasons so as aforesaid assigned. On consideration, whereof, it is decided and adjudged that said statute and indictments are not void nor invalid nor repugnant to the said section one article one, section two article one, and section twenty-six article two of the Constitution of the State of Ohio, or section one of the fourteenth amendment to the Constitution of the United Sates or either of them or for any of the reasons assigned in said petition in error, and it is adjudged and ordered by this Court that the
37 judgment and order of said judges of said Circuit Court be and they are hereby affirmed and that the order heretofore granted suspending the judgment of said Circuit Court, be and the same is hereby dissolved and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no fee or penalty shall be assessed herein. It is further ordered that the defendant in error recover his costs from the plaintiff in error herein expended taxed at $—. Ordered, That a Special Mandate be sent to the Judges of the Circuit Court of Stark County, to carry this judgment into execution.

I, Lawson E. Emerson, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the Journal of said Court.

38 Witness my hand and the seal of said Court, this twenty-fourth day of July, A. D. 1906.

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*. [SEAL.]

STATE OF OHIO, *City of Columbus:*

Supreme Court of Ohio.

To the Honorable Circuit Court within and for the County of Stark, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of our Supreme Court of Ohio, in the case of Charles H. Van Horn *vs.* Frank Wilson, Sheriff, into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness Lawson E. Emerson, Clerk of our Said Supreme Court of Ohio, at Columbus, this 24th day of July 1906.

LAWSON E. EMERSON, *Clerk,*
By J. G. OBERMEYRE, *Deputy.* [SEAL.]

39 THE STATE OF OHIO, *Stark County, ss:*

I, Jacob J. Wise, Clerk of the Circuit Court, within and for said County, having the custody of the Files, Journals and Records of said Court, hereby certify that the foregoing from page 1 to page 34 is a true copy of the Record in cause No. 717 and from page 34 to page 38 is a certified copy of the Mandates from the Supreme Court and the Supercedeas Bond filed in cause No. 717 In the Matter of the Application of Charles H. Van Horn for Writ of *Habeas Corpus* as the same appears upon the Records of said Court, and I further certify that I have carefully compared said foregoing copy with the original Record, and the same is a full and correct transcript thereof.

Witness my hand and the seal of said court, at Canton, Ohio, this 15 day of September, A. D. 1906.

[Seal Common Pleas Court, Stark County, Ohio.]

JACOB J. WISE, *Clerk.*

Endorsed on cover: File No. 20,415. Ohio supreme court. Term No. 450. Charles H. Van Horn, plaintiff in error, *vs.* R. Frank Wilson, sheriff of Stark county, Ohio. Filed October 9th, 1906. File No. 20,415.

FILE COPY.

FILED.
NOV 7 1906
JAMES H. McKENNEY

Supreme Court of the United States

OCTOBER TERM 1906.

No. 446.
CORWIN D. BACHTEL, PLAINTIFF IN ERROR,
vs.
R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

No. 447.
CORWIN D. BACHTEL, PLAINTIFF IN ERROR,
vs.
R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

No. 448.
HARVEY H. MILLER, PLAINTIFF IN ERROR,
vs.
R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

No. 449.
WILLIAM L. DAVIS, PLAINTIFF IN ERROR,
vs.
R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

No. 450.
CHARLES H. VAN HORN, PLAINTIFF IN ERROR,
vs.
R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF FOR PLAINTIFFS IN ERROR.

(20411), (20412), (20413), (20414), (20415).

SYNOPSIS.

PAGE

Statement 6

Contention of plaintiffs in error in the State Courts 10

How the question was raised..... 11

Assignment of error..... 13

Argument 14

INTERPRETATION OF SECTION 30.

I. Could officers of banks other than those formed under act in question be indicted under section 30?..... 14

II. The rule of strict construction would apply in such supposed cases against officers of other banks..... 14

III. The section in question being an amendment merely, the meaning of the original section should first be settled 15

IV. Under the Ohio Constitution of 1802 special legislation was frequent... 16

V. The title of the original act must be considered in settling its meaning.. 16

VI. The intrinsic evidence of the original section 17

VII. The history of banking legislation in Ohio throws light upon the question 17

PAGE

VIII. Improbability of a criminal provision of general application being inserted in an act limited in point of time.. 19

IX. The meaning of the term "banking company" in original section must be given those words in the amended section 20

X. No reasons appear in the amendment for any change in the meaning of the words "banking company"..... 21

XI. The title of the amending act indicates no intention to enlarge the scope of section 30..... 23

XII. The intrinsic evidence of the amended section 24

XIII. The section under consideration must be read in connection with the other sections of the amending act.. 26

XIV. Section 27 of the original act is an interesting illustration of this point.. 27

XV. The amendatory act of 1879 and the amended section 30 disclose no purpose to enlarge the provisions of the original act or section..... 29

XVI. The term "banking company" as used in another section of the act has been read by the Supreme Court of Ohio as referring to banks organized under that act..... 29

PAGE

XVII. The accepted interpretation of the profession has excluded officers of all other banks 30

XVIII. The Supreme Court of Pennsylvania has inclined to a like construction of a similar section..... 31

XIX. Section 30 is not in the criminal code of the state..... 31

CONSTITUTIONAL QUESTION.

XX. Does the prosecution of plaintiffs in error under section 30 as amended in 1879 violate section 1 of the fourteenth amendment? 32

XXI. Our claims involve the consideration of the legislative power of classification 34

XXII. Decisions defining the clauses of the fourteenth amendment 34

XXIII. State decisions directly in point.... 36

XXIV. Has the legislature the power to place the officials and agents of the so-called free banks in a class by themselves? 38

XXV. The powers conferred by the two principal banking statutes 41

XXVI. Reasons for existence of two statutes for the incorporation of banks..... 47

XXVII. An illustration of gross inequality.. 50

PAGE

XXVIII. No special grounds for classification. 51

XXIX. The grant of corporate powers furnishes no ground for classification.. 52

XXX. Section 30 is not a mere police regulation 53

XXXI. The supposed classification was accidental 55

XXXII. If amended section 30 is declared unconstitutional is original section 30 revived? 56

XXXIII. As to the law of judicial notice..... 58

Supreme Court of the United States

OCTOBER TERM, 1906.

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vs.

R. FRANK WILSON, SHERIFF OF STARK CO., OHIO.

In Error to the Supreme Court of Ohio.

(20411), (20412), (20413), (20414), (20415).

NOTE. The five above entitled causes all depending upon one and the same question, the following brief is respectfully submitted as applicable to all the cases.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

The sole question sought to be raised in this Court is whether the following section of the statutes of Ohio contravenes section 1, fourteenth amendment of the Constitution of the United States.

Section 30 of the act of March 21, 1851, entitled "An act to authorize free banking," as amended April 24, 1879, (76 O. L. 74; R. S. Sec. 3821-85.)

"Every president, director, cashier, teller, clerk, or agent of any banking company, who shall embezzle, abstract, or wilfully misapply any of the moneys, funds, or credits of such company, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any notes, bonds, drafts, or bills of exchange, mortgage,

judgment or decree, or shall make any false entry in any book, report or statement of the company, with intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the company, or any agent appointed to inspect the affairs of any banking company in this state, shall be guilty of an offense, and, upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than one year, nor more then ten years."

The old state banking law of 1845, (2 Curwen, 1089,) having established the State Bank of Ohio and its branches as banks of issue, in 1851 the free banking act was passed authorizing banks of issue free from the control of the state bank, but limited in duration to the end of the year 1872, after which they were forbidden to transact business.

It contained a criminal section in substance the same as the section above quoted.

After banks formed under it had ceased to operate, by reason of the limitation in the act, and the motive for authorizing banks of issue having been removed by the federal tax on state bank issues, the act was amended on April 24, 1879, by cutting out all power to issue paper money and practically all reference to it, and the time limitation being also repealed, what remained authorized the incorporation of banks with powers to receive deposits, discount paper and buy and sell exchange. As appears by the statistics of the state published by authority of law, 57 banks were incorporated under the statute as thus amended,

of which some 34 were in business in 1905. The term "free banking" has no significance since the amendment of 1879, as it had relation solely to the issue of paper money.

On February 26, 1873, (70 O. L. 40) an act was passed in terms authorizing savings and loan associations, but with such broad powers as to authorize the carrying on of ordinary commercial banking. The published statistics show that under its provisions some 73 banks were formed before the year 1880, when the general incorporation laws of the state were revised on such broad lines as to authorize the incorporation of banks, (R. S. of Ohio, 1880, sec. 3235) the governing provisions of the act of 1873 being retained (R. S. 3797 and following). Under this general act, the statistics show 464 banks were formed of which some 330 were in existence in 1905.

The banking statistics of the state show that in addition to the banks incorporated under the two acts referred to, there are in the state some 300 banks owned by unincorporated stockholders, co-partnerships or individuals.

The Canton State Bank was incorporated under the so-called free banking act. The plaintiff in error, Bachtel was its cashier, Davis, its vice-president and a director, Van Horn, its teller, and Miller, a customer. In May Term, 1906, they were indicted in the Common Pleas Court of Stark County, under amended section 30 above quoted, upon various charges, Bachtel and Van Horn as principals, Davis and Miller as aiders and abettors. After filing demurrers which were overruled and before arraign-

ment the plaintiffs in error severally petitioned a judge of the State Circuit Court, (the intermediate appellate court, but with original jurisdiction in *habeas corpus*), for writs of *habeas corpus*, which were allowed and made returnable to the three members of the court, alleging that the section of law in question was unconstitutional and therefore the Court of Comman Pleas was without jurisdiction.

Upon return of the sheriff that the parties were in his custody under indictments based upon that act, they were admitted to bail to abide the order of the Circuit Court. Upon final hearing the Circuit Court judges dismissed the several applications and remanded the petitioners to the custody of the sheriff. Before this judgment was carried into effect the plaintiffs in error filed their several petitions in error in the State Supreme Court, applying for a suspension of the judment in the Circuit Court until final hearing in the Supreme Court, which was allowed.

Upon the final hearing in the Supreme Court the judgment of the Circuit Court was affirmed, without opinion or report. To reverse that judgment these writs of error are now prosecuted.

THE QUESTION RAISED IN CIRCUIT COURT.

The question presented before the circuit judges is this:

The officers, clerks and agents of all the banks in the state, (excluding National Banks) in their relations to their banks, their depositors, customers, the community and the state are a class of persons acting under the same conditions and circumstances.

The statute above quoted,

(a) by no possible interpretation includes the officers, clerks and agents of the unincorporated stock banks, of banks, copartnerships or of individuals;

(b) and by no proper interpretation, includes the officers, clerks and agents of banks existing under the general incorporation laws of the state;

(c) but said section 30 affects only the officers, clerks and agents of banks formed under the law of which it is a part.

CONTENTION OF PLAINTIFFS IN ERROR IN THE STATE COURTS.

Under either of the foregoing interpretations of the statute the imprisonment of an officer, clerk or agent in its enforcement is a deprivation of his liberty without due process of law, for the first element of due process of law is equality before the law: and that it does not affect equally all persons in the state acting under like conditions and circumstances.

Under that interpretation which brings within the section all officers and agents of incorporated com-

panies, those of the unincorporated joint stock banks, copartnership and private banks are exempt from its operation; under that interpretation which includes the officers, clerks and agents of banks formed under the act of which the section is a part, the officers, etc., of banks incorporated under the general incorporation law of the state, and the partnership and private banks are unaffected.

HOW THE FEDERAL QUESTION WAS RAISED..

It was first raised in the Court of Common Pleas by demurrer stated in the statutory form to which was attached a special notice as follows:

DEMURRER.

This defendant demurs to the said indictment because the facts stated therein do not constitute an offense punishable by the laws of this state.

NOTICE.

The State of Ohio will take notice that upon the hearing of this demurer Corwin D. Bachtel, the defendant herein will show that he was born in the United States and is now a resident of the State of Ohio; that he is subject to the jurisdiction of the United States and a citizen thereof and of the State of Ohio; that by the laws of the State of Ohio no indictment could have been found except under section 30 of an act entitled "An act to authorize Free Banking," passed March 21st, 1851, and amended April 24th, 1879. Defendant says that said act and law should not be enforced against him because it

abridges his privileges and immunities as a citizen of the United States. That by its enforcement against him it will deprive him of his liberty and property without due process of law and that said act denies him the equal protection of the laws. He says that said act affects but a small number and a very small proportion of the class of persons in the State of Ohio who are engaged in the employments designated in said act in the same manner and under the same conditions and circumstances as this defendant, and that said act is unequal and partial; and that said act contravenes article 14, section 1 of the amendments to the Constitution of the United States and is therefore void.

Upon the hearing of said demurrer this defendant will also insist that said act is void because it contravenes article 1, sections 1 and 2, and article 2, section 26 of the Constitution of Ohio. Said defendant will further contend that the facts stated in said indictment do not constitute an offense under the laws of Ohio.

No. 447, record pp. 16-17.)

Referring to Record in No. 446, on page 12 will be found the form of petition for writ of *habeas corpus* in which it is set out, referring to said section 30, "that said statute is in contravention of the 14th amendment of the constitution of the United States," also certain provisions of the state constitution.

The judgment of the Circuit Court, same Record, p. 60, was that "said Section of said Act * * * is not in contravention of the 14th Amendment of the Constitution of the United States, etc."

The question was raised in the petition in error to the State Supreme Court, Record p. 6, and is passed upon specifically in the judgment of the Supreme Court, Record pp. 8-9.

The entire contention of the plaintiffs in error is disclosed in the opinion of the circuit judges. (See Record in case No. 447, p. 24.)

ASSIGNMENT OF ERROR.

The assignment of error upon which the several writs of error are predicated are as follows:

"The Supreme Court of Ohio erred in holding and deciding that section 30 of an act of the General Assembly of the State of Ohio entitled "an act to authorize free banking," passed March 21, 1851, as amended April 24, 1879, (3821-85) Bates' Annotated Statutes of Ohio, was valid. The validity of said section was denied and drawn in question by the plaintiff in error on the ground that is was repugnant to the Constitution of the United States, and in contravention thereof.

"The said errors are more particularly set forth as follows:

"The Supreme Court of Ohio erred in holding and deciding that the privileges and immunities of the plaintiff in error as a citizen of the United States were not abridged, and that he was not deprived of his liberty and property by the State of Ohio without due process of law nor denied the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States by

being arrested and ~~protected~~ prosecuted under an indictment found and returned solely under favor of section 30 of the above recited acts." (Record in No. 446, pp 1-2.)

ARGUMENT.

THE FIRST QUESTION OF IMPORTACE IS, THE INTERPRETATION OF THE STATUTE IN QUESTION: THE 30TH SECTION OF THE ACT OF 1851 AS AMENDED IN 1879.

I.

COULD OFFICERS OF BANKS OTHER THAN THOSE FORMED UNDER THE ACT IN QUESTION BE INDICTED UNDER SECTION 30?

Obviously this will test the interpretation of the statute. As it would be interpreted against the officers of another bank, for example one formed under the general incorporation laws of the state or a copartnership bank, so it must be interpreted here. It cannot be read one way in one case, and another way in another case.

II.

THE RULE OF STRICT CONSTRUCTION WOULD APPLY IN SUCH SUPPOSED CASES.

Penal statutes must be strictly constructed.

United States v. Wiltberger, 5 Wheaton 75. Chief Justice Marshal on page 95 says:

"The rule that penal laws are to be constructed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the

legislative, not in the judicial department. It is the legislature, not the court, which is to define the crime, and ordain its punishment."

On p. 96, "It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of the statute, is within its provisions, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character, with those which are enumerated."

"If this principle has ever been recognized in expounding criminal law it has been in cases of considerable irritation which it would be unsafe to consider as precedents forming a general rule for other cases."

It must not be urged that the officers of other banks are within the reason of this enactment, and that, therefore, it should be construed to include them. The supposed general intention of the legislature can not be permitted to extend the scope of the section beyond its language properly interpreted according to the well settled rules of interpretation adopted by the Courts.

United States v. Harris, 177 U. S. 305.

III.

THE SECTION IN QUESTION, BEING AN AMENDMENT MERELY THE MEANING OF THE ORIGINAL SECTION SHOULD FIRST BE SETTLED.

We cite Black on Interpretation of Laws, Sec. 130, p. 356.

"For the same reason, of two constructions, either of which is warranted by the words of an amendatory act, that is to be preferred which best harmonizes the amendment with the general tenor and spirit of the act amended."

IV.

UNDER THE OHIO CONSTITUTION OF 1802 SPECIAL LEGISLATION WAS FREQUENT.

The act of March 21, 1851, was passed before the adoption of the constitution of 1851. Under the old constitution special legislation, even in criminal matters, was frequent and upheld. It is not surprising to find it in the statute in question.

Albyer v. State, 10 O. S. 588.

V.

THE TITLE OF THE ORIGINAL ACT MUST BE CONSIDERED IN SETTLING ITS MEANING, — "AN ACT TO AUTHORIZE FREE BANKING."

This excludes any intention to enact a general crimes act embracing officers or employes of other corporations, or to deal with the officers of any other banks incorporated or unincorporated.

The rule in Ohio is well settled.

Steamboat Monarch v. Finley, 10 O. R. 384, p. 387:

"Although the title to a statute constitutes no part of the law, yet it may well be considered in its constructon as furnishing an index by which doubtful matters in the body of the statutes may be settled."

Harris v. State, 57 O. S. 92, referring to titles to chapters of the crimes act:

"These titles are part of the statute, and are to be considered in arriving at the intent of the legislature."

Burgunder v. Weil, 60 O. S. 234.

In this case the construction of the act is made largely to be dependent upno the title.

Bates v. Nelson, 49 Mich. 459-60.

"The operation of a statute cannot go beyond the purpose expressed in the title."

VI.

THE INTRINSIC EVIDENCE OF THE ORIGINAL SECTION.

The language of original section 30 shows clearly that the term "any banking company" embraced only banks under that act. See copy of original section on page 21. The words in italics, referring to circulating notes limits the whole section to banks under that act. It was referring to banks of issue and limited the reference to banks whose notes were delivered to them by the Auditor of State "as provided by this act."

VII.

THE HISTORY OF BANKING LEGISLATION IN OHIO THROWS LIGHT UPON THE QUESTION.

It is a notable fact that the state banking act of 1845, (2 Curwen, 1089), contained a criminal provision just like the original section 30 of the act of

1851; in fact the latter is a precise copy of the former. If original section 30 under consideration embraced all banks in the state, then the act of 1845 did the same, and there would be two acts covering precisely the same ground, and the second act was useless. If each related to the banks founded under those acts respectively there was a purpose in each.

But that is not all. In 1857 the legislature passed a law authorizing a new system of banks of issue, without repealing the old laws or affecting the banks existing under either. In it was incorporated a substantial copy of the criminal section found in the former acts. Had that act received the approval of the popular vote required by the constitution of 1851 we would have had three criminal sections all applying to all the banks of the state, unless as we contend each act referred to its own banks.

But again, the referendum vote having defeated the law of 1857, in 1877 (74 O. L. 117, sec 22), the legislature passed an act for a system of banks without powers of issue, along the lines of the act of 1851 as amended two years later in 1879, and inserted in it a similar criminal section but with different penalty, so again, there would be three different criminal laws covering precisely the same ground, if as contended these sections embrace all banks in the state, at least so far as legislative intent was expressed, but that law, too, was defeated by the people to whom it was referred through a mistaken view of the state constitution on the subject of banks.

To complete this historical sketch; — when the legislature amended section 30 in 1879 as quoted, if

the original section of 1851 included all banks in Ohio, then must the section of 1845 do the like, and when the amendment of 1879 came into being there were two sections in different laws, both in force from 1879 to 1894 when the act of 1845 was repealed, (91 O. L. 396), both of which it must be claimed by our adversaries covered the officers of all banks in the state, *with conflicting punishments,* for the act of 1845 prescribed not less than *five years* imprisonment and the act of 1879 a minimum of *one year.* The only interpretation that will harmonize this conflict is to read these various criminal sections in different laws as confined to the officials of the banks formed under the respective acts.

The persistence of the legislature in this plan indicates a "habit" which doubtless originated in the old time practice of incorporating banks by special acts.

VIII.

IMPROBABILITY OF A CRIMINAL PROVISION OF GENERAL APPLICATION BEING INSERTED IN AN ACT LIMITED IN POINT OF TIME.

By section 10 of the original free banking act, (2 Curwen, p. 1611), each corporation formed under it was created "a body politic and corporate with succession, until the year 1872, and thereafter until the repeal of this act," and section 42 provided, "that nothing in this act contained shall be construed so as to authorize a continuance of banking business under this act, after the year 1872."

The legislature was evidently dealing with a temporary matter. How improbable that by section 30 of the same act it was intending to enact a general criminal law applicable to the officers of banks that might come into being under acts long after the act of 1851 would lose its force and be forgotten. In fact this same free banking act of 1851 was printed as "obsolete" in Swan & Critchfield's edition of the statutes at large of the state in the year 1870. (See page 168 of that edition.)

IX.

THE MEANING OF THE TERM "BANKING COMPANY" IN ORIGINAL SECTION 30 BEING ASCERTAINED, THE SAME MEANING SHOULD BE GIVEN THOSE WORDS IN THE AMENDED SECTION.

This general rule is fully recognized in Ohio.

Williams v. State, 35 O. S. 175.

In this case it is held that a change in the definition of the crime of manslaughter, and also in the provisions of the code of criminal procedure as to the form of indictment for that offense, did not effect a change in either the law or the practice, for the Court say:

"We see in this change of language no purpose to change the law in any particular."

State v. Commissioners of Shelby County, 36 O. S. 326.

Syllabus 1. "Where an act of the legislature, or several acts *in pari materia*, have undergone revision,

the same construction will prevail as before revision, unless the language of the act plainly requires a change of construction, to conform to the manifest intent of the legislature."

Boynton, J., p. 330:

"Neither an alteration in phraseology nor the omission or addition of words in the latter statute necessarily require a change of construction. The intent to give to the new act a different effect from the old, should be clearly manifested."

The rule is followed in City of Warren v. Davis, 43 O. S. 447.

X.

NO REASONS APPEAR IN THE AMENDMENT FOR ANY CHANGE IN THE MEANING OF THE WORDS "BANKING COMPANY."

The original and amended sections are as follows:

Original sec. 30, (49 O. L. 41. 2 Curwen, p. 1609.)	Sec. 30 as amended April 24, 1879, (76 O. L. 74. R. S. Sec. 3821-85.)
Every President, Director, Cashier, Teller, Clerk or Agent, of any banking company, who shall embezzle, abstract, or willfully misapply any of the moneys, funds or credits of such company, or shall, without authority from the directors, issue	Every president, director, cashier, teller, clerk or agent, of any banking company, who shall embezzle, abstract, or willfully misapply any of the moneys, funds or credits of such company, or shall, without authority from the directors,

or put in circulation any of the notes of such company, or shall put in circulation any bills or notes purporting to be the circulating bills or notes of such bank, other than those delivered to such bank by the Auditor of State, as provided for by this act, either with or without the authority of the directors, or shall, without such authority, issue or put forth any certfiicate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or shall manke any false entry on any book, report or statement of the company with an intent in either case to injure or defraud such company, or *to injure or defraud* any other company, body corporate or politic, or any individual person, or to deceive any officer or agent appointed to inspect the affairs of any banking company in the State, shall be guilty of a *misdemean-*

issue or put forth any certfiicate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or shall make any false entry on any book, report or statement of the company with an intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person, or to deceive any officer *of the company*, or any agent appointed to inspect the affairs of any banking company in this State shall be guilty of an *offense*,

or, and upon conviction thereof, shall be confined in the penitentiary at hard labor, not less than *five* nor more than ten years.	and, upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than *one year*, nor more than ten years.

The only changes in the amendment are the omission of the provisions relating to circulation which were no longer necessary as the power to issue circulation was repealed in the amending act, the change of the minimum term of punishment from five years to one year, and substitution of the word "offense" for "misedemeanor". None of these alterations imply any intent to change the meaning of the words "banking companies."

XI.

THE TITLE OF THE AMENDING ACT INDICATES NO INTENTION TO ENLARGE THE SCOPE OF SECTION 30.

The title of the act of 1879 is "an act further to amend an act entitled 'an act to authorize free banking,' passed March 21, 1851, (49 Ohio Laws 41) and the acts amendatory and supplementary thereto." (76 O. L. 72.)

The Circuit Court considered this a decisive point.

"Now, as determining whether the phrase in the amended Section 30, 'any banking company,' applies to all banking companies of the state, or only banking companies organized under the free banking act, it is only necessary to refer to the title of this act en-

titled 'An act to authorize free banking, passed March 21, 1851, (49 Ohio Laws, 41), and the acts amendatory and supplementary thereto.' So that the conclusion to our minds is irresistible, that the legislature at this time had not in contemplation any other kind or character of a banking institution except those contemplated in the act of March 21, 1851, and that nothing contained in this amendatory act was intended by the legislature, or by any fair construction thereof could be *hold or* include any other bank, except the class provided for in the original act, including those in existence, or any that might come into existence under the provisions thereof, during the time that said act remain — the law of Ohio." (See record in No. 447, p. 26.)

XII.

THE INTRINSIC EVIDENCE OF THE AMENDED SECTION.

When this amendment was made, the general incorporation laws of the state did not authorize the incorporation of banks. (Vol. 1. Swan & Critchfield's Statutes, p. 266 and following.) Each class of corporations had a law for itself. That authority was granted by section 3235 of the revision of 1880, the year after the amendment of the free banking act. (Revised Statutes of Ohio, Edition of 1880, section 3235.)

There was in force, however, a statute of February 26, 1873, authorizing the incorporation of savings and loan associations, (70 Ohio Laws 41) which

was the only act in the nature of a banking law upon the statute books except the act of 1851 in question and the old state bank act. The provisions of this act of 1873, so far as they related to the powers and government of those banks were embodied in the Revised Statutes of 1880 (section 3797 and following), and after 1880 such banks were obliged to incorporate under the general incorporation chapter of the Revised Statutes, section 3235.

It follows that if amended section 30 of 1879 was intended to include "banking companies" other than those formed under the particular act of which section 30 was a part, it must have referred to institutions formed under the savings and loan act of 1873, or the liquidating branches of the old state bank then taxed out of active existence, but whose liquidating officers were still covered by the criminal section of their own original act of 1845.

But it seems incredible that the legislature would have used the term "banking company" to embrace institutions named by statute "associations."

The amended section 30 includes "director" and "cashier." The savings and loan act used neither word; the members of the governing body were called "trustees" and the active executive officer, "treasurer."

XIII.

THE SECTION UNDER CONSIDERATION MUST BE READ IN CONNECTION WITH THE OTHER SECTIONS OF THE AMENDING ACT.

Black on Interpretation of Laws, p. 166.

"In the construction of a statute, in order to determine the true intention of the legislature, the particular clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts."

This rule is fully recognized in Ohio.

Rhodes v. Weldy, 46 O. S. 234.

"Where the same word or phrase is used more than once in the same act in relation to the same subject-matter and looking to the same general purpose, if in one connection its meaning is clear and in another it is otherwise doubtful or obscure, it is in the latter case to receive the same construction as in the former, unless there is something in the connection in which it is employed, plainly calling for a different construction."

Ohio v. Blake, 2 O. S. 147, see p. 151.

"It is a settled rule of construction that the intention of the law maker is to be deduced from a view of the whole and every part of the enactment taken and compared together."

This rule was applied to a statute very similar in its terms to the section in hand.

See Coble v. Farmers' Bank, 63 O. S. 528.

In one section of the act the term "banking partnership" was limited to banking partnerships whose capital was represented by shares or certificates of stock. In another, the term was used without that limitation. It was held that the same meaning should be attached to the term in both sections.

The term "any banking company" is used in almost every one of the 47 sections of the act of 1851 and in the amending act of 1879, and wherever used it refers to banks organized under the act. In many of the sections express reference is made to the act, in others it is plainly implied.

In the original act the reference is express in sections 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 18, 20, 24, 25, 29, 30, (being the section in question), 31, 32, 34, 35, 37, 38, 39, 43, and 44: the term is used in the following sections without express reference to companies organized under the act, but the intention is as clear as though the reference in each instance were made: sections 2, 11, 12, 13, 15, 19, 21, 22, 23, 26, 27, 28, 33, 36, 40, 41, 42, 45 and 46.

XIV.

SECTION 27 OF THE ORIGINAL ACT IS AN INTERESTING ILLUSTRATION OF THIS POINT.

"Sec. 27. All notes, bills, and other evidences of debt, excepting bills of exchange, discounted by

any banking company, shall be made, by the terms thereof, or by special indorsement, payable solely to such company; and no such evidence of debt shall be assignable except for collection, or for the following purposes: First — To pay and redeem the circulating notes of such company; Second — To pay other liabilities of the said company, and after such liabilities shall have been discharged; Third — To divide among the shareholders on their stock." (49 v. 41) (3821-82) Annotated Statutes of Ohio.

This section was not repealed in 1879 and stands as a part of the act of 1851 amended.

It is pertinent to inquire what interpretation the words "banking company" are to receive in this section. If it is to be held to include all savings banks, trust companies, copartnership banks and private bankers, then under the ruling of the Supreme Court in Vanata v. Bank, 9 O. S. 27, all the notes discounted by all of these institutions must be considered null and void, for it is safe to say that not one of them discounts non-negotiable paper. That ruling was upon a precisely similar provision in the state bank act in 1845, but will apply equally to section 27, thus leaving all the banks in the state to their action for money had and received against actual borrowers, but destroying all rights against sureties, third parties, and upon mortgage or other securities. Would such an interpretation be accepted?

It will be observed that the term "any banking company" is used in this section without reference to those formed under the act, and in that respect is the same as section 30 of the amended section, but quite

differently as to the original section in which express reference is made to companies formed under the act.

XV.

THE AMENDATORY ACT OF 1879 AND THE AMENDED SECTION 30 DISCLOSE NO PURPOSE TO ENLARGE THE PROVISIONS OF THE ORIGINAL ACT OR SECTION.

The sole purpose of the amending act was to eliminate provisions,— to strike out everything that related to bank circulation. Not a single new feature was added to the law. It is highly improbable that with such a purpose in mind the legislature should contemplate an extension of the sole criminal provision of the statute. If so, it certainly owed it to the people of the state to express this purpose in unmistakable language.

XVI.

THE TERM "BANKING COMPANY" AS USED IN ANOTHER SECTION OF THE ACT HAS BEEN READ BY THE SUPREME COURT OF OHIO AS REFERRNING TO BANKS ORGANIZED UNDER THAT ACT.

In Franklin Bank v. Commercial Bank, 36 O. S. 350, the construction of section 12 of the act was involved. The section 12 referred to used the words "company" and "banking company" in the same unrestricted form as in section 30, but (on p. 354) the court speaks of those words as meaning banks organized under that act.

XVII.

THE ACCEPTED INTERPRETATION OF THE PROFESSION AND CERTAINLY OF PROSECUTING ATTORNEYS THROUGHOUT THE STATE HAS EXCLUDED OFFICERS OF ALL OTHER BANKS FROM THE SCOPE OF THIS CRIMINAL SECTION.

This is apparent from the fact that though this act has been upon the statute books of the state for over fifty years, no prosecutions have been attempted under it, so far as is known, before those against the plaintiffs in error. Not a single case is found in the reports. Many indictments have been found against officers and agents of other incorporated and unincorporated banks, but always under other criminal statutes.

In the case of State v. Kusnick, 45 O. S. 535, the cashier of an unincorporated bank was indicted under the general embezzlement act. Evidently the prosecuting authority assumed his case did not fall within section 30. The defendant was acquitted upon a point that could not have been suggested under section 30.

A case of great and general notoriety in the adjoining county, (Ohio v. Wagoner) shows the same official interpretation of the act, for indictment was found under the perjury act, the defendant being the official of a savings bank under the general incorporation law. Two juries disagreed upon the question whether the defendant had sworn to an official report as certified by a notary public. Could he have

been prosecuted under section 30, it would have been sufficient to have proven a false entry in the report without an oath. But that was not done.

XVIII.

THE SUPREME COURT OF PENNSYLVANIA HAS INCLINED TO A LIKE CONSTRUCTION OF A SIMILAR SECTION.

Pennsylvania in 1861 adopted in substance the free banking law of Ohio, with a criminal section like section 30. In Com. v. Ketner,, 92 Pa. State 372, it appears the cashier of a national bank was indicted under that law, and in the opinion, Paxson, J. (p. 376) says:

"It was urged, however, *with much force*, that the act of 1861 was only intended to apply to banks organized under the free banking law of which it forms a part;"

But the case was decided upon the point that Congress having established the national banks their officers were amenable to section 5209 of that law and not the state law.

XIX.

SECTION 30 IS NOT IN THE CRIMINAL CODE OF THE STATE.

On January 1, 1880, the revised statutes of Ohio went into effect, the work of a codifying commission appointed some years before to condense and ar-

range the statutes at large. As a part of this work the commission revised the criminal statutes of the state, and those of general application were placed in a title by themselves, being Title 1 of Part 4. Many sections theretofore of limited and special application were given a broad application and placed in this title under appropriate classifications. Section 30 which was amended the year that report was made was not so placed. On the contrary the commission in its report stated that the entire free banking act as just amended was not included in the revision, but was placed in an appendix to the Revised Statutes. See 2 R. S. of Ohio, 1880, p. 1823, published under direction of the Commission by authority of the legislature.

We submit that this is strong evidence that neither the commission nor the legislature supposed this statute affected other banks, incorporated or unincorporated.

THE CONSTITUTIONAL QUESTION.

XX.

DOES THE PROSECUTION OF PLAINTIFFS IN ERROR UNDER SECTION 30 AS AMENDED IN 1879 VIOLATE SECTION 1 OF THE FOURTEENTH AMENDMENT?

Constitution of the United States.

Fourteenth Amendment, Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. No state shall *make or enforce any law* which shall abridge the privileges or immunities of citizens of the United States; nor shall any State *deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

In view of the disputed meaning of section 30, we submit the following alternative claims:

(a) If the Court hold with us that that section includes only the officials and agents of the so-called free banks, we claim this statute and these prosecutions deprive the plaintiffs in error of their liberty *without due process of law*, and *deny to them the equal protection of the laws*, because the statute is enforcible against a part, and a very small part, of a class of persons all of whom act under similar conditions and circumstances; and that thereby the officials and agents of less than thirty-four banks are attempted to be placed in a class by themselves, for the purposes of this criminal legislation, separate and apart from the officials and agents of other incorporated banks and of all unincorporated banks.

(b) If the Court holds that section 30 includes the officials and agents of all incorporated banks, but excludes those of unicorporated private banks, the same discrimination is presented in principle, and the same result should follow.

XXI.

OUR CLAIMS INVOLVE THE CONSIDERATION OF THE LEGISLATIVE POWER OF CLASSIFICATION.

We have set forth on page 8 of this brief some numbers, derived from state statistical sources, of banks organized under the two principal banking acts, and also those of unincorporated banks. We do not consider these numbers of any importance. In fact they are constantly changing. The material facts upon which we rely are that the Canton State Bank was organized under the amended free banking act as shown by the indictments; we admit that some *others* were so organized; it is a matter of general knowledge in the state and will not be denied that in 1879 banks existed under the act of February 26, 1873, authorizing savings and loan associations, and that others were formed thereafter and some now exist, and that throughout this period unincorporated banks existed and now exist.

XXII.

WE REFER TO THE FOLLOWING CASES DEFINING THE CLAUSES OF THE FOURTEENTH AMENDMENT UPON WHICH WE RELY.

Caldwell v. State of Texas, 137 U. S. 692, Chief Justice Fuller, page 697,

"No state can deprive particular persons or classes of equal and impartial justice under the

law. That due process of law (under the 14th amendment) is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice." On p. 698, "The powers of the state must be exercised within the limits of these principles, and its exercise cannot be sustained when special, partial and arbitrary."

Railroad Company v. Matthews, 174 U. S. 96, Justice Brewer on page 104, says:—

"On the other hand it is also true that the equal protection guaranteed by the constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment should be for double damages or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subject to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

In this case the statute was sustained because it affected all the railroads in the state.

Railway Company v. Ellis, 165 U. S. 150. "A state statute imposing an attorney's fee not to exceed ten dollars in addition to the costs, upon railway corporations omitting to pay certain claims within a certain time after presentation, which applies to no other corporation or individuals, is unconstitutional as denying to them the equal protection of the laws."

Giozza v. Tierman, 148 U. S. 655.

"8. Due process of law within the meaning of the 14th Amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

"9. When a state statute affects all persons engaged in the sale of intoxicating in exactly the same maner and degree, it is not in violation of the Constitution of the United States."

XXIII.

STATE DECISIONS DIRECTLY IN POINT.

Budd v. State, 3 Humphries, (Tenn.,) 483.

"A statute declaring that if certain officers of the Union bank embezzle, misappropriate funds, or make false entries, it shall be a felony, is in violation of the clause of the constitution declaring that 'no man shall be disseized or imprisoned, etc., but by the judgment of his peers or the law of the land,' but *aliter* if it extended to the same officers of all banks within the state."

We respectfully ask the Court to examine this case, as it is directly in point.

A case wherein it appears that the officers and employes of thirty-four banks fall within the operation of section 30, out of several hundred that are not within its provisions cannot be distinguished from the case in Tennessee, where one bank alone was brought within the provisions of a similar act.

Carter Bros. v. Coleman, 84 Ala., 256, Youngblood v. Trust & Savings Company, 95 Ala., 521.

In the first of these cases a statute of the state of Alabama made it a penal offense for any private banker to charge more than a certain rate for discounting commercial paper. That act was declared unconstitutional because it embraced only certain members of a class. But in the second case an amended act which included incorporated banks as well as private bankers was sustained, the latter act was justified although it was restricted to those engaged in the business of banking, on the ground that in the matter of discounting paper they constituted a "class in and of themselves." "The opportunities and temptations of persons engaged in it, to evade or violate laws against usury are so much greater and more frequent than those of persons not so engaged as to raise up a necessity for the application of more stringent measures and restrictions than are necessary in respect of other businesses and persons engaged therein. And it is this consideration which differentiates the business of banking from all others in respect to usury, and furnishes a predicate for such legislation as is contemplated

in section 4140 for the regulation of banking and bankers which does not exist as to any other occupations; just as the inherent dangers involved in the operation of a railroad differentiates that from all occupations, and necessitates legislation which would be entirely unnecessary and innocuous in respect to the business of farming, for instance."

XXIV.

HAS THE LEGISLATURE THE POWER TO TREAT THE OFFICIALS AND AGENTS OF THE SO-CALLED FREE BANKS AS A CLASS BY THEMSELVES?

The following propositions are well settled.

(a) The legislature cannot create a class where none naturally exists;

(b) Nor by artificially carving a class out of a larger one;

(c) Nor when classification is unnatural, unnecessary, arbitrary, fictitious or mistaken;

(d) Nor unless the classification is based upon matters which have relation to the object sought to be accomplished;

(e) Nor when the classification results in inequality before the law.

(f) The fiat of the legislature is not conclusive; the courts have the final decision.

Railway Company v. Ellis, 165 U. S., 150.

"Classification to relieve a law from the charge of a denial of equal protection cannot be made

arbitrarily, but must be based upon some difference which bears a just and proper relation to the attempted slassification."

Railroad Company v. Mathews, 147 U. S., 96 on page 104.

"Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonale and arbitrary, if the discrimination is based upon matters which have no relation to the objects sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

Connolley v. Union Sewer Pipe Company, 184 U. S., 539.

5. "A discrimination in favor of agricultural products or live stock in the hands of the producer or raiser, made by the Illinois trust act of June 20, 1893 exempting them from the provisions which prohibit the recovery of the price of articles sold by any trust or combination formed in restraint of trade or competition in violation of that act, renders the act repugnant to the provisions of the Constitution, 14th amendment, in respect to equal protection of the laws."

Justice Harlan, page 560, says: —"The difficulty is not met with by saying that 'generally speaking, the state, when making laws may, in its discretion, make a classification of persons, firms, or corpora-

tions, and associations, in order to subserve public ojects. For this court has held that classification must always rest upon some difference which bears reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily without any such basis. *But arbitrary selection can never be justified by calling it a classification.* The equal protection demanded by the 14th amendment forbids this. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

Again, on page 564: "We conclude this part of the discussion by saying that *to declare that some of the classes engaged in domestic trade or commerce, shall be deemed CRIMINALS if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class should not be bound to regard those regulations*, but may combine their capital, skill or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary."

Under the principles established by this court the power of classification does not exist unless it appears that the conditions and circumstances under which the plaintiffs in error were called upon to act

were so different from those under which other bank officials and agents were called upon to act as to justify classifying them by themselves.

What conceivable difference is there? Many of the banks under the savings and loan act carry on strictly commercial banking. The list of over 500 found in Record No. 446, p. 69, of banks under the savings and loan act show that the names of many of them give no indication of being savings banks. On the other hand, the Canton State Bank named in the indictments had a savings department.

We proceed to show the powers in fact conferred upon banks by the two principal banking laws found upon the statute books.

XXV.

THE POWERS CONFERRED BY THE TWO PRICINPAL BANKING STATUTES.

The savings and loan banks, so-called, derive their powers from the act of February 26, 1873, vol. 2, sections 3797 to 3811 excluding 3806a and 3806b, the following sections in that chapter coming from other laws relating to other matters. Since 1880 the incorporation of these institutions must be effected under the general incorporation laws of the state, section 3235 (vol. 2 Annotated Stat. p. 1836), the essential part of which is as follows.

"Sec. 3235. (For what purpose corporations may be formed.) Corporations may be formed in the manner provided in this chapter for any purpose for which individuals may lawfully associate themselves, except for carrying on professional business;" * *

The act of 1851 for organizing free banks, as amended in 1879, will be found in vol. 2, Annotated stat., p. 2116. (3821-64 and following.)

Banks under both acts are formed by certificate of incorporation, in one case filled with the secretary of state, in the other with the county recorder and a copy filed with the secretary of state.

The essential powers conferred in these laws will be found in the following sections.

(a) In savings and loan law.

"Sec. 3804. (Interest may be paid on deposits.) Such corporations may receive on deposit, for safekeeping or investment, all sums of money that may be offered for that purpose by tradesmen, clerks, mechanice, laborers, minors, or other persons, or by any religious or charitable society, or municipal corporation, or that may be ordered to be deposited by any court in this state having custody of money, and make investments thereof in the manner provided in this chapter, and may credit and pay such rates of interest thereon as may be agreed upon, not exceeding the rate allowed by law; and they may *purchase and sell promissory notes, drafts, and bills of exchange* at such rate as may be agreed upon, and *transact such other business as properly pertains* to the *business of such associations not forbidden by the constitution and laws of this state.*"

"Sec. 3806. (Savings banks: investment of funds; discounts; interest; exchange; prohibiting advertisement of capital not paid in.) Such corporations may invest their funds in the purchase of stocks, bonds or other evidences of indebtedness of

the United States, stocks and bonds of the state of Ohio, bonds of any municipal corporation of this state, or school bonds of any municipal corporation, special school district or body politic in this state, issued pursuant to law, or in bonds issued by county commissioners within this state in pursuance of law, to such an amount as may be deemed proper, or the stocks or bonds of any state of the United States that has, for five years imediately preceding such investment, paid the interest on its bonded debt in lawful money of the United States, to the extent of ten per cent. of their paid in capital and deposits, or in bonds or notes secured by mortgages on unincumbered real estate situated in the county where the association is located, or any adjoining county in this state, worth, exclusive of buildings, at least double the amount loaned thereon, unless accompanied with valid insurance upon the buildings thereon that will make the value of the real estate and insurance at least double the amount loaned thereon; but not more than seventy-five per centum of the amount of the paid in capital and deposits of any such association shall at any time be invested in such real estate securities. Such associations may *discount notes and bills of exchange, and may take receive, reserve and charge upon any loan or discount made upon any note, mill of exchange or other evidence of debt, interest at the rate allowed by law.* Such interest may be reserved or taken in advance, at the time of making the loans or discounts; and for *interest taken directly or indirectly in excess thereof,* the *association shall be subject to the same penalty as natural*

persons; but in the purchase, discount or sale of a bill of exchange, payable at another place than the place of such purchase, discount or sale, the current rate of discount or premium may be charged and received in addition thereto. And no such corporation shall advertise by newspaper or letter-head or in any other way a larger capital stock than has been actually paid in."

"Sec. 3807. (Limit of loan to one person.) The total liabilities of any person, company, corporation, or firm, to any such association, either as principal debtor, or as security or indorser for others, for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, shall at no time exceed one-fifth part of the capital stock of such association actually paid in; but the discount of bills of exchange drawn against actually existing values, and the discount of commercial or business paper actually owned by the person, company, corporation, or firm negotiating the same, shall not be considered as money borrowed."

"Sec. 3803. (What real estate it may acquire.) Such corporation may acquire, hold, and convey only such real estate as is necessary and convenient for the transaction of its business, and such as it may find necessary to purchase, at judicial sale or otherwise, to secure debts due it; but it shall not hold any real estate purchased to secure debts due it for a longer period than five years; and in all cases of loans upon real estate the expense of searches, examination of certificates, and recording of papers, shall be paid by the borrower."

(b) In the amended free banking act.

"(3821-69) Sec. 10. Powers of the company.) * * * and by its name shall have power to contract, and to prosecute and defend suits and actions of every description, as fully as natural persons; to *loan money, buy, sell, and discount bills of exchange, notes and all other written evidences of debt*, except such as may be herein prohibited; *to receive deposits, buy and sell gold and silver coin and bullion, collect and pay over money, and transact all other business properly appertaining to banking*, subject to the provisions and restrictions of this act; may acquire, hold and convey such real estate as may be necessary to the convenient transaction of its business, and no more; but may, however, acquire title to any real estate pledged to secure any debt previously contracted or purchased on an execution or order of sale, to satisfy any judgment or decree in its favor, or which shall have been conveyed to it in payment of any previous debt; but shall not hold any real estate so acquired, longer than is necessary to avoid a loss of any part of the debt, interest, and costs for the collection or security of which it was acquired; but at any time before selling the same, upon being tendered by the last preceding owner, or his legal representative, such sum as shall be necessary to save such company from loss of any part of the debt, interest, taxes, costs, and other necessary charges for the collection or security of which said real estate was acquired, such company shall release to such owner, his legal representative or assigns, all its right, title, and interest therein.

"(3821-80) Sec. 25. (Liabilities specified; proviso.) The total liabilities of any person, company,

corporation, or firm, for money borrowed, including the liabilities of the several members thereof to any banking company herein authorized, shall at no time exceed one-tenth part of the amount of the capital stock of such company actually paid in: provided, that the discount of bona fide bills of exchange drawn against actually existing values, and the discount of commercial or business paper actually owned by the person or persons, corporation or firm negotiating the same, shall not be considered money borrowed."

Two things must be observed in these laws; the powers granted are in substance the same; and *neither grants any powers not possessed by natural persons dealing singly or in unincorporated companies and copartnerships.*

They are in substance simply means to secure corporate existence. In Ohio the receiving of deposits, discounting paper and dealing in exchange is not a franchise. In these acts the common law right to do this kind of banking is not conferred but is somewhat abridged.

That the savings and loan act authorized the exercises of all "banking powers" other than the power to issue circulating notes was decided in Dearborn v. Bank, 42 O. S. 617.

XXVI.

WHY ARE THERE TWO STATUTES FOR THE INCORPORATION OF BANKS IN OHIO, IF THERE ARE NO SUBSTANTIAL DIFFERENCES IN THEIR ESSENTIAL PROVISIONS?

The banking statutes of the state present an instructive history that throws light on this question.

Before the constitution of 1851 the incorporated banks were banks of issue organized under general or special laws. There were no incorporated commercial banks without the power to issue paper money. There were a few "savings societies" upon the plan of the New England savings banks, without stockholders, managed by trustees.

The constitution of 1851 adopted a new rule as to banks.

Article XIII, section 7. "No act of the General Assembly, authorizing associations with banking powers, shall take effect until it shall be submitted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election."

In 1857 a new bank law authorizing banks of issue was passed but the people defeated it.

The war tax of 1866 foreclosed further interest in banks of issue, but the natural desire to secure corporate perpetuity for copartnership banks led to further legislation. But this new constitutional provision raised serious doubts as to the power of the legislature to authorize banks of any kind without

popular approval. The first effort was the law of 1867 (64 O. L. 184), for the formation of savings societies. This covered the ground as to savings banks pure and simple but it did not meet the business demand. The next step was the act of 1873, (70 O. L. 40), authorizing banks with full powers of deposit, discount and exchange, but with a gloss of the savings bank thrown over them. Some sixty odd banks were formed under this, some pursuing savings bank methods and others the methods of commercial banking, until 1877, when the doubt as to their constitutionality led to another appeal to the people by the pasage of an act like the old free banking act of 1851 with the paper money provisions omitted, and named after it, an act to authorize free banking, (74 O. L. 117), and submitted that to the people, but it was defeated.

Another expedient was resorted to. The old act of 1851 was taken in hand because it was enacted before the adoption of the new constitution, and the Supreme Court of the state had decided that it had not been abrogated by the constitution. It was easy to strike out the provisions for a circulation and what remained would authorize banks substantially like those authorized by the savings and loan act, but avoiding the annoying uncertainty of constitutionality that clung to that statute, the question about that time having been raised in the lower courts. But one difficulty was encountered. Section 10 of the act of 1851 declared that every bank formed under it as hereinbefore shown "was created a body politic and corporate, with succession

until the year 1872, and thereafter, until the repeal of this act." Clearly this contemplated that all companies formed under it should be organized before 1872. It needed amendment to make it quite safe to organize new banks long after 1872. But to amend that section, the granting clause of the act, would be to let go of the hold upon the old constitution. It was therefore let alone; the promoters of the measure evidently preferring to take the chances of the question being raised. All this can be read between the lines of this remarkable attempt to rehabilitate a law that by its own provisions had been moribund for several years, and stamped obsolete in the statute books. Instead of writing a new act like the one just submitted (1877) to the people, under the belief that that was necessary, the old act was dealt with so as to avoid submission. The manifest purpose was to allow the incorporation of banks with the same full powers as those under the savings and loan act, but free from suspicion of unconstitutionality.

Meanwhile the question was in the courts. The case of Dearborn v. Northwestern Savings Bank, 42 O. S. 617, was decided in 1885. But the title of the case shows it was decided for the bank in the Common Pleas Court, as the defendant below was plaintiff in error in the District Court, where it was reserved. It is probable, therefore, that the question of the constitutionality of the savings and loan act was first decided in favor of the banks not long after the amendment of the free banking act in 1879.

The statistics show that but few banks were

organized under the amended act, but that commercial and savings banks were both formed freely under the savings and loan chapter of the general corporation act, the terms of which as already shown, permitted general banking.

The reason for two acts of substantially the same powers seems clear in the light of their history read from the statute books.

XXVII.

AN ILLUSTRATION OF GROSS INEQUALITY.

"Sec. 3817. Every banking institution, or corporation engaged in the business of banking in this state, shall make not less than two reports each year to the auditor of state as provided for in the next section showing the condition thereof at the close of business on any past day specified by said auditor of state; but institutions known as building and loan associations, organized and conducted under the statutes for such institutions and not doing a banking business shall not be required to make such reports."

Six of the indictments against Bachtel charge that in reports called for by the above section "false entries" were made. Three of the indictments refer to one report, charging in each a different item in the same report as being falsely made. It is claimed that these entries fall within the terms of section 30.

Section 3817 is very broad in its terms and all incorporated banking concerns, including savings banks, trust companies, etc., are held to make these reports.

As to all officers who do not fall within the terms of section 30, their conduct in respect to the making of these reports can be investigated in the criminal courts solely by an indictment under the perjury statute. Of course there can be but one indictment in respect of one report, no matter how many entries are complained of. As to one of Bachtel's reports three indictments are preferred charging offenses, and there is no reason why he could not have been also indicted under the perjury statute for swearing to the report.

It is claimed that he can be tried and if convicted punished three times for the false entries, and possibly again for the oath. Is this equality before the law?

Ho Ah Kow v. Noonan. 12 Federal Cases 252. "The term 'as guaranteed to every person by the federal constitution' implies not only that the courts of the country should be open to him on the same terms as to all others for the security of his person or property, the prevention or redress of wrongs, and the enforcement of contracts, but no charges or burdens should be levied on him which are not equally borne by others, and *that in the administration of the criminal laws, he shall suffer for his offenses no greater or different punishment.*"

XXVIII.

NO SPECIAL GROUNDS FOR CLASSIFICATION.

We submit that no reasonable grounds exist for classification of the officers, clerks and agents of the Ohio banks.

None of these banks is a fiscal agent of the state. None has any special relations to the community by virtue of any powers granted in the acts under review. The officers, clerks and agents of one set of banks owe no more to the community or the state than those of the other set.

It is to be noticed that the learned judges of the circuit court do not pretend to find any ground for classification. (Rec. 447, p. 24.)

XXIX.

THE GRANT OF CORPORATE POWERS FURNISHES NO GROUND FOR CLASSIFICATION.

As between banks under the savings and loan act and those under the free banking act all being incorporated there is no ground for discrimination. But there is none between the incorporated and unincorporated banks.

Johnson v. Mining Company, 127 California 4, (Involving a law establishing liens upon all the property of the corporation for wages of employes). Corporations cannot be made the basis of classification for purposes of legislation unless such classification is founded upon some constitutional or natural distinction, which suggests a reason to justify the diversity of legislation representing them.

The incorporated banks have acquired no powers or privileges in respect to banking not possessed by private citizens.

Banking, outside of the issue of circulation, is not a franchise.

Exchange Bank v. Hines, 3 O. S. 1—31.

State v. Scougal, 3 S. Dakota 55.

XXX.

SECTION 30 IS NOT A MERE POLICE REGULATION.

The provisions of this section do not regulate anything or any one. They define no duties, prescribe not a single rule of action; nor does it contain mere penal sanctions of regulations found in other sections of the act. It cannot be said, therefore, that it is a mere police regulation as to which the legislature must be allowed a certain discretion as to the order and extent of its exercise of the regulating power.

This section deals with primary rights and duties as to which regulations are not necessary. It is a criminal law as distinguished from regulation. It is not dealing with a course of conduct that may be right and lawful until declared to be unlawful, — *malum prohibitum*, but it deals with matters *mala in se*. It is simply a human enforcement of the laws of God. The two commandments, "Thou shalt not steal," and "Thou shalt not bear false witness against thy neighbor," comprehend the entire scope and all the elements of this section.

This is a criminal law. The difference between a mere police regulation and a criminal law is that in one the act prohibited is wrong because it is forbid-

den, in a criminal law properly considered the act is wrong before it is forbidden.

Ex parte Falke, 42 O. S. 638.
Marmet v. State, 45 O. S. 63.

Being a criminal statute, dealing with acts wrong in themselves and not merely made so by law, and having denounced certain acts, it must bring within the denunciation all who commit those acts.

It must be remembered the law is not dealing with a corporation, nor its acts. The differences between corporations and their powers are really foreign to the question. The section is dealing with the acts of men; which acts take their color and character not from the company for whom they act, not whether such company is incorporated or unincorporated, *but from the character of the business that is entrusted to their official care.*

Judged from this point of view what persons come within the denunciation of this statute? Obviously all who are called upon to act under substantially similar conditions and circumstances.

If then, this section 30 *brings within its operations only a part of those who do the acts denounced, it deprives those brought within its penalties of their equal rights before the law.*

XXXI.

THE SUPPOSED CLASSIFICATION WAS ACCIDENTAL.

We submit that no one can contemplate the history of this bank legislation and conclude that the legislature actually conceived the design of classifying the banks of the state for the purposes of criminal legislation.

The task in hand when this old law was amended was to get rid of its paper money features. The law was then practically dead, both by limitation and by virtue of the government tax. The purpose manifested in every line of the amending act of 1879 is to continue the act of 1851 in force without adding anything to the statute, and thus avoid submission to the people. Section 30 was lightly touched by striking out the reference to circulation and reducing the minimum term of punishment.

The notion cannot be entertained that at that time, and in enacting that law, the legislature undertook to classify bank officers and agents for the purpose of criminal legislation. Not a bank then existed under the law of 1851; and of course there was not a bank official then upon which that law could take effect. But thirty odd banks had been organized under the law as it was passed in 1851. There is no reason to believe that there was anything in the history of those banks, or the conduct of their officials that would suggest classification, for this section 30 has never, so far as we know, been invoked before these cases; certainly there is

no reported case under it. In short no basis existed in knowledge or experience that would justify classification or enable it to be done understandingly.

On the contrary the history of this legislation shows that this discrimination was an accidental result of the evolution of this law from its ancient and obsolete source.

XXXII.

IF AMENDED SECTION 30 IS DECLARED UNCONSTITUTIONAL IS ORIGINAL SECTION 30 REVIVED?

It appears from the opinion of the Circuit Court that not only was this question answered in the affirmative, but it probably relieved that Court of any doubts that may have existed in their minds upon the main question.

But the answers to this contention are several and conclusive.

(a) The original section 30 applied only to the officials of banks organized before 1872, and their active operations were limited to that period and then to be wound up as hereinbefore shown. The legislature did not then contemplate this new series of banks, and certainly enacted no law that will bind them.

(b) The legislature in 1851 applied the criminal section to the officials of banks of issue. They certainly did not make it binding upon the banks not then contemplated, which came into existence long after the original act had spent its force and had

become obsolete, the new banks being of a different character from the old.

(c) The amended section, apparently in force at the times alleged in these indictments, prescribed a minimum penalty of one year, the original section, one of five years. If the amended section is expunged, by virtue of what power can the heavier penalty be enforced? The rule of substitution of an old repealing statute declared unconstitutional has no application to criminal law. In Ohio there are no common law crimes. The state must place on its statute books just what it intends to impose upon its citizens. No *ex post facto* revival of an ancient and repealed statute can be tolerated.

(d) No substitution of the old section is permissible under the fourteenth amendment.

The complaint of these defendants is not only that an unconstitutional law was enacted in 1879, or in 1851, but that in 1906 the State of Ohio proposes to prosecute them under an indictment under either of said laws.

The fourteenth amendment says no state shall make or *enforce* any law, etc. They are not so much concerned about its *making,* but protest against its enforcement. They object to being *deprived of liberty* or *property* without *due process of law* which means equal laws for all, or being *denied* the *equal protection of the laws.* The date of the law is immaterial; the date of the *enforcement,* of the *deprivation,* or of the *denial,* is more important.

In Kaukauna Water Company v. Canal Company, 142 U. S. 251, the law complained of was en-

acted in 1848, and the point was made that the fourteenth amendment, adopted July 21, 1868, did not affect it. This court, however, accepted the contention of the complainant that the acts done under the law being subsequent to the amendment, it controlled. It sounds like a travesty of justice to say that a law fifty years old, which has been a dead letter for the greater part of its nominal existence, and thereby escaped challenge, should now be enforced, whereas if it were passed at the last session of the assembly it would be held invalid.

XXXIII.

AS TO THE LAW OF JUDICIAL NOTICE.

The records disclose, strictly speaking, no evidence. The several constitutional questions were presented as questions of law to be decided in the light of the public facts which ought to be generally known throughout the state. Of these it was assumed the courts would take judicial notice.

See 7 Ency. of Evidence, p. 880, topic, Judicial Notice and cases cited.

Hunter v. Railway Company, 116 N. Y. 615, Brown, J., says:

"That notice may be taken of facts which are generally known, and, as the common knowledge of man ranges far and wide, so the doctrine embraces matters so curiously diverse as the rising of the sun; the status of the Isle of Cuba; the late Civil War; the contents of the Bible; the character of a camp

meeting; the height of the human frame; the fable of the frozen snake; the characteristics and construction of the ice cream freezer; the general use of the diamond stack or the straight stack spark arrester; the habits of those who shave — in fine, all things both great and small."

Brown v. Piper, 91 U. S. 37, 43.

The public facts above referred to related to the existence of different kinds of banks existing in the state, incorporated and unincorporated, and the general methods of conducting the banking business throughout the state.

Bank v. Hall, 83 N. Y. 338.

"Courts will take judicial notice of the general course of business in a community including the universal practice of banks."

While the number of banks existing under the several statutes was not important, we referred to the official statistics of the state so as to present the facts in a somewhat concrete form, and cited the annual reports of the Secretary and Auditor of State published by authority of law.

116 N. Y. 615.

"Courts may take judicial notice of facts which are a part of the general knowledge of the country and which are generally known and have been duly authenticated in repositories of facts open to all, and especially so of facts of official, scientific or historical character."

In presenting the cases to the State Supreme

Court, desiring to avoid reference to the numerous annual volumes of state statistics, we submitted a statement of the Secretary of State putting into convenient form the facts which have appeared in the reports of that office. The Court permitted it to be submitted and we now offer it here for the same purpose. (Record pp. 65-82, Case No. 446.) The Auditor of State's annual report of 1885 is referred to as showing the banks then making reports under section 3817 Ohio R. S. From these sources the numbers used in this brief are derived as to incorporated banks. The number of unincorporated banks in the state is taken from the Bankers' Directory in use by all bankers throughout the country.

These are not submitted as evidence, but as a proper means of presenting to the Court's mind what in theory of law is known by all courts.

State v. Main, 69 Conn. 123.

Brown v. Piper, 91 U. S. 37.

Com. v. Marzynski, 149 Mass. 68.

The absence of a finding as to these public facts in the State Court will not preclude their notice by this Court.

New York Indians v. United States, 170 U. S. 1.

"Documents emanating from the executive and legislative departments of the government may be judicially noticed on appeal, though they were not incorporated in the findings of the court below."

Respectfully submitted,

WM. A. LYNCH,

Of Counsel for Plaintiffs in Error.

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OCT 9 1906

IN THE

Supreme Court of the United States.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

No. 446.

WILLIAM L. DAVIS,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

No. 449.

HARVEY H MILLER,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

No. 448.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

No. 447.

CHARLES H. VAN HORN,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

No. 450.

Motion to Advance Causes for Hearing.

CHARLES C. UPHAM,
Prosecuting Attorney of Stark County, Ohio, and
JOHN W. CRAINE,
Att'ys for Defendant in Error.

IN THE

Supreme Court of the United States.

CORWIN D. BACHTEL,
Plaintiff in Error,

vs.

R. FRANK WILSON,
Sheriff of Stark County, Ohio,
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WILLIAM L. DAVIS,
Plaintiff in Error,

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R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

HARVEY H. MILLER,
Plaintiff in Error,

vs.

R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

CORWIN D. BACHTEL,
Plaintiff in Error,

vs.

R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

CHARLES H. VAN HORN,
Plaintiff in Error,

vs.

R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.

Motion to Advance Causes for Hearing.

Now comes the above named Defendant in Error and respectfully represents to the Court that he is the Defendant in Error in said causes, and while there are only five in this Court, they represent twenty-four indictments and

criminal causes now pending in the Court of Common Pleas of Stark County, Ohio. The above indictments were found against these Plaintiffs in Error by the Grand Jury of the January, 1906, term of said Court of Common Pleas, and by reason of wrecking of a State Bank known as The Canton State Bank by them, some of whom where officers of said bank.

Said Defendant in Error represents that said causes by their very nature are ones entitled to a speedy hearing. Said Defendant in Error therefore respectfully ask an order advancing said causes for a hearing at an early day to be fixed.

STATEMENT IN SUPPORT OF MOTIONS TO ADVANCE CAUSES FOR HEARING.

These indictments about twenty-four in number which are covered by the five cases now pending in this Court were found under Section 30, of the free banking act of Ohio, passed in 1851, as amended in 1879, and is now known as Section 3821-85, Bates Annotated Statutes of Ohio.

The Plaintiffs in Error, the Defendants below, filed a demurrer to all of said indictments among other things, charging that the said Statute (3821-85) was unconstitutional and void; first, because it was contrary to the Constitution of the State of Ohio, and second, contrary to the Constitution of the United States. The Common Pleas Court overruled all of said demurrers. The Plaintiffs in Error then commenced proceedings in habeas corpus in the Circuit Court of Ohio, raising the same questions in which the Circuit Court held their contention to be wrong, and that said Section 3821-85 was constitutional and valid, not only as regards the Constitution of Ohio, but also the Constitution of the United States.

The plaintiffs in error then commenced an error proceeding in the Supreme Court of the State of Ohio, raising the same questions and the matter was fully argued before the full bench, and the Supreme Court of Ohio unanimously held that said section was constitutional and valid so far as the Constitution of the State of Ohio is concerned, and al-

so the Constitution of the United States. The cases are then brought into this Court and we feel that the question should be speedily settled; that not only all of these indictments are waiting until this one question is settled, but it being the only Statute on the books in Ohio on this subject, and there being numerous State Banks, we feel that the interest of all the people of Ohio require a speedy settlement of this question.

The people throughout this section of the state are vitally interested in this question and desire it settled. As we have stated in our motion to advance, the indictments were drawn by reason of the wrecking of this The Canton State Bank by its officers and others who are the Plaintiffs in Error in these proceedings, and more than fourteen hundred depositors of the bank are anxiously waiting the termination of this action.

We, therefore, ask that this cause be advanced, so that this one question as to the constitutionality of Section 3821-85 be settled finally.

Respectfully submitted,

CHARLES C. UPHAM and
JOHN W. CRANE,
Att'ys for Defendant in Error.

IN THE

Supreme Court of the United States

OF AMERICA.

Error to the Supreme Court of the State of Ohio.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 446.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 447.

HARVEY H. MILLER,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 448.

WILLIAM L. DAVIS,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 449.

CHARLES H. VAN HORN,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 450.

BRIEF
FOR
DEFENDANT
IN ERROR.

The Plaintiff in Error, Corwin D. Bachtel, was the cashier; William L. Davis, the vice president, and Charles H. VanHorn, the teller of The Canton State Bank, a corporation, incorporated under the act known as "The Free

Banking Act of 1851, of the State of Ohio," and were indicted by the Grand Jury of Stark County, Ohio, under the 30th section of "The Free Banking Act," passed March 21, 1851, as amended April 24, 1879, and further known as Section 3821-85, of the Revised Statutes of Ohio. Harvey H. Miller was indicted under R. S. of Ohio, Section 6804, as an aider and abettor. After the Court of Common Pleas of Stark County, Ohio, had overruled a demurrer to these indictments and before any trial of the Plaintiffs in Error under said indictments, the Plaintiffs in Error brought a Habeas Corpus proceeding against the Defendant in Error in the Circuit Court (an intermediary Court between the Common Pleas and the Supreme), claiming that Revised Statutes of Ohio, Section 3821-85, applied only to officers and agents of "Free Banking Institutions," and hence was class legislation, prohibited by Section 26 of Article 2 of the Constitution of Ohio, and likewise by Section 1, Article 14, of the Constitution of the UNITED STATES. Upon a hearing of this matter before the Circuit Court (composed of three Judges), that Court unanimously decided against the Plaintiffs in Error. Plaintiffs in Error then prosecuted error to the Supreme Court of the State of Ohio, for the purpose of reversing the Circuit Court. The Supreme Court of Ohio (composed of six Judges) unanimously sustained the holding of the Circuit Court and held the act not violative of either of the State or UNITED STATES Constitution, and these causes are now in this Court for the purpose of reversing the Supreme Court of the State of Ohio.

The decision of the Supreme Court of Ohio conclusively settled all questions involved in these cases, excepting the question as to whether or not Sections 3821-85 of the Statutes of Ohio contravenes Section 1, Article 14, of the Constitution of the UNITED STATES.

In order to determine this question, it will be necessary to construe Section 1, Article 14, of the Constitution of the UNITED STATES, which is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Revised Statues of Ohio, 3821–85 reads as follows: "Every president, director, cashier, teller, clerk or agent of any Banking Company, who shall embezzle, abstract, or willfully misapply any of the moneys, funds, or credits of any such Company, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any notes, bonds, drafts, or bill of exchange, mortgage, judgment or decree, or shall make any false entry in any book, report, or statement of the Company, with intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the Company, or any agent appointed to inspect the affairs of any banking company in this state, shall be guilty of an offense, and, upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than one year, nor more than ten years.

This Court has the right to place a final and conclusive construction upon Section 1, Article 14, of the Constitution of the UNITED STATES; but the Supreme Court of the State of Ohio has the right to place an ultimate and conclusive construction upon Revised Statutes of Ohio, Section 3821–85.

96 U. S. 499.
113 U. S. 465.
182 U. S. 503.
193 U. S. 10.
193 U. S. 504.
98 U. S. 365 and 366.
121 U. S. 391 and 392.
190 U. S. 412.
193 U. S. 532 and 549.

The Supreme Court of Ohio did not report this case; but the question was before the Court as to whether or not the words, "Any Banking Company" and "Any Banking Company in this State" embraced all Institutions, other than National Banks, doing banking business in this State, or was confined solely to banks organized under "The Free Banking Act." If the Supreme Court held that the words "Any Banking Company" embraces all Banking Institutions in the State of Ohio, other than National Banks, then clearly Plaintiffs in Error would have no just grounds to claim an unconstitutional classification.

ANY BANKING COMPANY.

Plaintiffs in Error claim that the words "Any Banking Company" is confined to Free Banking Institutions, not because of the language used, but solely because of the position in which this Section is found in the Statutes of Ohio; whilst our contention is that the words "Any Banking Company" means exactly what the words import. We contend this:

1st. Because the words "Any Banking Company" are plain, clear, concise and unambiguous, and when such is the case, they explain themselves and do not admit of any construction other than their natural import.

66 O. S. 621.
66 O. S. 434.
67 O. S. 244.

2nd. Because the Legislature intended the words "Any Banking Company" to embrace all Banking Institutions in the State of Ohio, as there is no other section

of the Statutes of Ohio punishing any officer of any Banking Institution for doing the things prohibited by Section 3821-85, and if this section does not embrace the officers of all banking institutions, then the officers of all Banking Institutions, excepting those of "Free Banking Institutions," can abstract or willfully misapply the moneys, funds and credits of the Banks to which they are connected, without punishment.

3rd. Because Revised Statutes 3821-85 has no apparent connection with and in no wise modifies or affects any of the other sub-divisions of Revised Statute 3821 and might have been placed in the Criminal Code, or some other part of the Statute, than that in which it is, without affecting any of the other sub-divisions of R. S. 3821, and without, in any way, impairing or making its meaning obscure.

IS R. S. 3821-85 IN CONFLICT WITH SECTION 1, ARTICLE 14, OF THE CONSTITUTION OF THE UNITED STATES.

If the words "Any Banking Company" do not mean what we contend for them, but on the other hand are restricted to "Free Banking Institutions," then is the act in conflict with Section 1, Article 14, of the Constitution of the United States? If it is in conflict, it must be either with that portion which reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" or "Nor deny to any person within its jurisdiction the equal protection of the laws."

In the Slaughter House cases 16 Wall. 36, approved 136 U. S. 448; 146 U. S. 37, 38; 153 U. S. 539; 169 U. S. 676; 176 U. S. 587, 591 and 593, it was held that the privileges and immunities of citizens of the UNITED STATES were those privileges and immunities which a citizen might claim under the Constitution, Treaties, or

Statutes of the UNITED STATES. Now clearly the Plaintiffs in Error would have no right to embezzle, abstract or willfully misapply the funds of their bank, or assign its notes, or make false entries in its books, or make false reports to the auditor of State, by virtue of the Constitution, Treaties, or Statutes of the UNITED STATES, and hence it would follow that R. S. 3821–85 would not be in conflict with that clause.

This Court has held that the equal protection guaranteed by the Constitution means that all persons of the same class and under the same conditions shall be treated with impartiality. This Court has said that:

"The states have the power of classification, and it is not within the scope of the 14th amendment to withhold from the states that power of classification, and if the law deals alike with all of a certain class, it is not obnoxious to the charge of a denial of equal protection."

Hayes vs. Missouri, 120 U. S. 68.
Railroad Co. vs. Mackey, 127 U. S. 205.
Walston vs. Nevin, 128 U. S. 578.
Bell's Gap Railroad vs. Pennsylvania, 134 U. S. 232.
Pacific Express Co. vs. Seibert, 142 U. S. 339.
Giozza vs. Tiernan, 148 U. S. 657.
Columbia-Southern Railway vs. Wright, 151 U. S. 470.
Marchant vs. Penn. Railroad, 153 U. S. 380.
St. Louis & San Francisco Railway vs. Mathews, 165 U. S. 1.
Gulf Colo. & Santa Fe Railway vs. Ellis, 165 U. S. 150.
101 U. S. 22, 31, 33.
115 U. S. 337.

"A State may classify persons and objects for the purpose of legislation, providing the classification is based on proper and justifiable distinctions, considering the purpose of the law and the means to be observed to effect that pur-

pose, and such a law is not in conflict with the equal protection clause of the 14th amendment to the Constitution of the UNITED STATES."

St. Johns vs. New York, 201 U. S. 633.

Magoun vs. Ill. Trust & Saving Bank, 170 U. S. 283, 292, 293 and 294.

"A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a State could not tax any property or calling, unless at the same time it taxed all property or all callings."

Imposing a tax license on the owners of elevators situated along railroads and not on other elevators was held to be proper classification.

180 U. S. 452 and 469.

"The 14th amendment was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways, or through its undoubted power to impose different taxes upon different trades and professions; and imposing a license tax on meat packing houses is not an arbitrary and unreasonable classification which will render the tax void under the 14th amendment as denying the equal protection of the laws; nor is it a denial of equal protection of the law because the tax is not imposed on persons not doing a meat packing house business but selling products thereof or because it is not imposed on persons engaged in packing articles of food other than meat."

Armour Company vs. Lacy, 200 U. S. 226.

Imposing a tax on street railways and not on steam railroads was upheld in 198 U. S. 392.

Imposing a tax on the Meat Packing Business and not on the packing of other articles of food, was sustained.

200 U. S. 226.

Penalizing non-producing venders of milk and not producing venders of milk was upheld in 201 U. S. 633.

"As we have frequently held, the State has a right to classify occupations and to impose different taxes upon different occupations, such has been constantly the practice of Congress under the Internal Revenue Laws."

Cook vs. Marshall Co., 196 U. S. 261-275.

Armour Packing Co. vs. Lacy, 200 U. S. 226-235.

Section 1 of the 14th amendment does not attempt to interfere with the States in their police regulations.

A State may divide its territory into sections and enact different laws for the residents of the different sections without violating Section 1 of the 14th amendment of the Constitution of the UNITED STATES. All that this amendment requires is, that the persons living in the different districts have equal right under the law.

101 U. S. 22-31-32.

A State may provide that the people living in a city of 100,000 population shall have 15 challenges in a jury trial, while other citizens of the same State not living in such city, can only have 10 challenges. Such a law does not violate Section 1 of the 14th amendment to the Constitution of the UNITED STATES.

120 U. S. 68.

The R. S. of the UNITED STATES, Section 5209, is a copy and reproduction of R. S. of Ohio, 3821-35, and although that section of the statute has been before the Supreme Court of the UNITED STATES on numerous occasions, no Court ever questioned its constitutionality.

"Free Banking Institutions" are incorporated under a different act of the legislature than other Banking Institutions and have different powers and different obligations. An examination of "The Free Banking Act," R. S. of Ohio, Section 3821-64 et seq., will show the peculiar characteristic of "Free Banking Institutions" and how radically different their powers and obligations are from other banking institutions. We think these peculiarities were sufficient to justify the legislature in classifying the officers of the same.

SPECIAL LEGISLATION.

The "Free Banking Act" in question was passed March 21, 1851, and was a valid enactment.

6 O. S. 319.

2 O. S. 607.

The 14th Amendment of the Constitution of the UNITED STATES was adopted July 28, 1868.

The 14th Article of the Constitution of the UNITED STATES is prospective and not retrospective in its operations.

The 14th Amendment was not intended to repeal or annul existing legislation or special laws, existing at the time of its adoption, and when it was adopted the "Free Banking Act" remained as much unimpaired as it was prior to the adoption of the 14th Amendment. It is true Section 30 of the "Free Banking Act of 1851" R. S. 3821-85 was amended April 24, 1879. If the amendment of April 24, 1879, is constitutional, well and good; but if it is unconstitutional the repealing clause falls with the amendment, and the original act is restored. This has been the uniform holding of the Supreme Court of Ohio, who as formerly stated, is the conclusive judge of State enactments.

67 O. S. 303 and 306.

66 O. S. 482 and 488.

60 O. S. 273.

Respectfully submitted,

Charles C. Upham

Prosecuting Attorney,

John McCrane

Associate Counsel,

Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 446.—October Term, 1906.

Corwin D. Bachtel, Plaintiff in Error, vs. R. Frank Wilson, Sheriff of Stark County, Ohio. } In error to the Supreme Court of the State of Ohio.

[January 7, 1907.]

The sole question in this case, as stated by counsel for plaintiff in error, is whether the following section of the statutes of Ohio contravenes section 1 of the Fourteenth Amendment of the Constitution of the United States:

"Every president, director, cashier, teller, clerk or agent of any banking company who shall embezzle, abstract or willfully misapply any of the moneys, funds or credits of such company, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any notes, bonds, drafts or bills of exchange, mortgage, judgment or decree, or shall make any false entry in any book, report or statement of the company, with intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the company, or any agent appointed to inspect the affairs of any banking company in this State, shall be guilty of an offense, and, upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than one year nor more than ten years." Section 30, Act of March 21, 1851, entitled "An act to authorize free banking," as amended April 24, 1879, 76 O. L. 74; 2 Bates' Annotated Ohio Statutes, 6th ed. sec. 3821–85.

Plaintiff in error, who was cashier of the Canton State Bank, a bank incorporated under the above "free banking" act, was indicted in the Court of Common Pleas of Stark County for a violation of this section. A demurrer to the indictment having been overruled, he, before arraignment, sued out a writ of *habeas corpus* in the Circuit Court of that county. Thereafter the final judgment of the Supreme Court of the State in that proceeding having been adverse, he brought the case here on this writ of error.

Mr. Justice Brewer delivered the opinion of the Court.

Counsel predicate the unconstitutionality of this statute, not on its provisions standing by themselves, but on its relation to other statutes.

On February 26, 1873, (70 O. L. 40,) an act was passed in terms incorporating savings and loan associations, but with powers such as in fact authorized the carrying on of ordinary commercial banking. Under this

statute a few institutions were organized. In 1880 a general incorporation law was enacted (Rev. Stat. Ohio 1880, sec. 3235 and following), and under it many banks were formed. In addition the banking statistics of the State show that there are several banks owned by unincorporated stockholders, copartnerships or individuals. Now, in no statute, save the free banking act, is there any section with provisions kindred to those in section 30 above quoted, and the contention is that the plaintiff in error was denied the "equal protection of the laws" guaranteed by the Fourteenth Amendment, in that he was subject to prosecution and punishment for matters and things which, if done by a cashier of any similar institution, whether unincorporated or incorporated under the statutes of Ohio other than the free banking act, would not subject him to punishment. The cashiers of such other institutions are charged with duties substantially the same as those of this plaintiff in error, and yet the one may be punished for a violation of those duties and the others not. Can the State single out a few men and punish them for acts, when for like acts others are free from liability?

No opinion was filed by the Supreme Court of the State, and we, therefore, are not advised of the grounds upon which that court held section 30 valid; yet that court did hold it valid, and in the face of the same objections that are made to it here. If "any banking company," as found in the free banking act, is applicable to every banking institution, no matter under what statute organized, there is no violation of the equal protection of the laws. Counsel for plaintiff in error contend that the Supreme Court could not have given so broad a meaning to those words, because they are in a section treating of crimes, and the rule of strict construction, which is universal in respect to criminal statutes, forbids its extension to institutions other than those incorporated under the act of which it is a part; because the title of the original act, "An act to authorize free banking," limits the scope of the statute, and therefore the applicability of every section therein; and, further, that, as the free banking act, as originally passed, was only to be in force until the year 1872, it is improbable that a criminal provision of general application should be inserted in an act so limited in the matter of time. On the other hand, it is contended by the defendant in error that the words in section 30, "any banking company," embrace all banking institutions in the State of Ohio, whether incorporated under the free banking act or not, and this because the words themselves are broad and comprehensive, because there is no other provision in the statutes for punishing those who commit the offenses named in said section, and it cannot be supposed that the legislature intended that other like officials should be immune from punishment, and also because section 30, both in the original act and also in the Re-

vised Statutes, has no apparent connection with, in no way modifies or affects any other sections, and might as well have been placed in the criminal code or by itself in the statutes.

But we are not called upon to decide which is the correct interpretation. The Supreme Court of a State is the ultimate tribunal to determine the meaning of its local statutes. We are not to assume that that which seems more reasonable to us also seemed more reasonable to and was adopted by it. Before we can pronounce its judgment in conflict with the Federal Constitution it must be made to appear that its decision was one necessarily in conflict therewith and not that possibly, or even probably, it was. It surely is not unworthy of consideration that the legislature, having before it the question of punishment for offenses committed by banking officers, having made provision therefor by one section in which it used the term "any banking company," may have believed that thereby it had included in its punitive provisions all banking institutions, and that a repetition of that section in other statutes was unnecessary. We do not decide that this was so, but we do hold that in view of the silence of the Supreme Court we are not justified in assuming that it held that it was not so.

Further, if we assume that the Supreme Court was of the opinion that section 30 was limited in its applicability to institutions incorporated under the free banking act, a question will then be whether the selection of officers of those institutions and subjecting them to punishment, when the officers of all other banking institutions, guilty of similar offenses, are not so subject, is a denial of the equal protection of the laws. The power of a State legislature to select certain individuals for the operation of a statute is not an arbitrary power, one that it can exercise without regard to any principle of classification. And yet there is a power of selection. The Fourteenth Amendment was not designed to prevent all exercise of judgment by a State legislature of what the interests of the State require and to compel it to run all its laws in the channels of general legislation. It may deem that social and business conditions, without penal legislation, afford ample protection to the public against wrongdoing by certain officials, while such legislation may be deemed necessary for like protection against wrongdoing by other officials charged with substantially similar duties. The duties of a county or city treasurer may be very like those of the treasurer of a charitable or business corporation, and yet if the legislature prescribed penalties for misconduct of the former and none for similar misconduct of the latter it would be giving the amendment extreme force to make it efficient to overthrow the statute and thus relieve all treasurers from punishment. In short, the selection, in order to become obnoxious to the Fourteenth Amendment, must be arbitrary

and unreasonable, not merely possibly, but clearly and actually so. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411. Would the singling out for punishment of the officers of the free banks be an arbitrary selection? The free banks, though they may be like other banking institutions, are not in all respects the same.

But here, too, we are not called upon for an absolute decision, nor do we deem it necessary to determine whether there be such differences as will sustain the imposition of punishment of their officers, when none is cast upon the like officers of other banks. We only refer to these matters to indicate that there were at least two questions before the Supreme Court involving the validity of section 30, one of which, at least, presents no matter of a Federal nature, and in respect to each of which something may be said one way and the other, and until it is shown what the Supreme Court did in fact decide it is impossible to hold that the section as construed by it is in conflict with the Federal Constitution.

Under those circumstances it is clear that we have no jurisdiction, (*Johnson* v. *Risk*, 137 U. S. 300, and cases cited in opinion,) and the writ of error is

Dismissed.

Nos. 447, 448, 449 and 450.

447 Corwin D. Bachtel, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio.

448 Harvey H. Miller, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio.

449 William L. Davis, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio.

450 Charles H. Van Horn, Plaintiff in Error, *vs.* R. Frank Wilson, Sheriff of Stark County, Ohio.

In error to the Supreme Court of the State of Ohio.

[January 7, 1907.]

Mr. Justice BREWER delivered the opinion of the Court.

The same question controls these cases as the one just decided, and, for the reasons given in the foregoing opinion, they are

Dismissed.